

1 **TITLE XII—ELECTRICITY**

2 **SEC. 1201. SHORT TITLE.**

3 This title may be cited as the “Electric Reliability
4 Act of 2005”.

5 **Subtitle A—Reliability Standards**

6 **SEC. 1211. ELECTRIC RELIABILITY STANDARDS.**

7 (a) IN GENERAL.—Part II of the Federal Power Act
8 (16 U.S.C 824 et seq.) is amended by adding at the end
9 the following:

10 **“SEC. 215. ELECTRIC RELIABILITY.**

11 “(a) DEFINITIONS.—For purposes of this section:

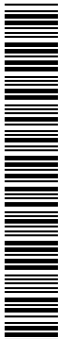
12 “(1) The term ‘bulk-power system’ means—

13 “(A) facilities and control systems nec-
14 essary for operating an interconnected electric
15 energy transmission network (or any portion
16 thereof); and

17 “(B) electric energy from generation facili-
18 ties needed to maintain transmission system re-
19 liability.

20 The term does not include facilities used in the local
21 distribution of electric energy.

22 “(2) The terms ‘Electric Reliability Organiza-
23 tion’ and ‘ERO’ mean the organization certified by



1 the Commission under subsection (c) the purpose of
2 which is to establish and enforce reliability stand-
3 ards for the bulk-power system, subject to Commis-
4 sion review.

5 “(3) The term ‘reliability standard’ means a re-
6 quirement, approved by the Commission under this
7 section, to provide for reliable operation of the bulk-
8 power system. The term includes requirements for
9 the operation of existing bulk-power system facilities
10 and the design of planned additions or modifications
11 to such facilities to the extent necessary to provide
12 for reliable operation of the bulk-power system, but
13 the term does not include any requirement to en-
14 large such facilities or to construct new transmission
15 capacity or generation capacity.

16 “(4) The term ‘reliable operation’ means oper-
17 ating the elements of the bulk-power system within
18 equipment and electric system thermal, voltage, and
19 stability limits so that instability, uncontrolled sepa-
20 ration, or cascading failures of such system will not
21 occur as a result of a sudden disturbance or unan-
22 ticipated failure of system elements.

23 “(5) The term ‘Interconnection’ means a geo-
24 graphic area in which the operation of bulk-power
25 system components is synchronized such that the

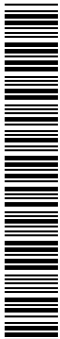


1 failure of 1 or more of such components may ad-
2 versely affect the ability of the operators of other
3 components within the system to maintain reliable
4 operation of the facilities within their control.

5 “(6) The term ‘transmission organization’
6 means a Regional Transmission Organization, Inde-
7 pendent System Operator, independent transmission
8 provider, or other transmission organization finally
9 approved by the Commission for the operation of
10 transmission facilities.

11 “(7) The term ‘regional entity’ means an entity
12 having enforcement authority pursuant to subsection
13 (e)(4).

14 “(b) JURISDICTION AND APPLICABILITY.—(1) The
15 Commission shall have jurisdiction, within the United
16 States, over the ERO certified by the Commission under
17 subsection (c), any regional entities, and all users, owners
18 and operators of the bulk-power system, including but not
19 limited to the entities described in section 201(f), for pur-
20 poses of approving reliability standards established under
21 this section and enforcing compliance with this section. All
22 users, owners and operators of the bulk-power system
23 shall comply with reliability standards that take effect
24 under this section.



1 “(2) The Commission shall issue a final rule to imple-
2 ment the requirements of this section not later than 180
3 days after the date of enactment of this section.

4 “(c) CERTIFICATION.—Following the issuance of a
5 Commission rule under subsection (b)(2), any person may
6 submit an application to the Commission for certification
7 as the Electric Reliability Organization. The Commission
8 may certify 1 such ERO if the Commission determines
9 that such ERO—

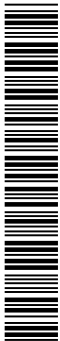
10 “(1) has the ability to develop and enforce, sub-
11 ject to subsection (e)(2), reliability standards that
12 provide for an adequate level of reliability of the
13 bulk-power system; and

14 “(2) has established rules that—

15 “(A) assure its independence of the users
16 and owners and operators of the bulk-power
17 system, while assuring fair stakeholder rep-
18 resentation in the selection of its directors and
19 balanced decisionmaking in any ERO com-
20 mittee or subordinate organizational structure;

21 “(B) allocate equitably reasonable dues,
22 fees, and other charges among end users for all
23 activities under this section;

24 “(C) provide fair and impartial procedures
25 for enforcement of reliability standards through



1 the imposition of penalties in accordance with
2 subsection (e) (including limitations on activi-
3 ties, functions, or operations, or other appro-
4 priate sanctions);

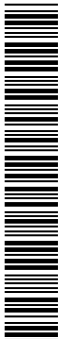
5 “(D) provide for reasonable notice and op-
6 portunity for public comment, due process,
7 openness, and balance of interests in developing
8 reliability standards and otherwise exercising its
9 duties; and

10 “(E) provide for taking, after certification,
11 appropriate steps to gain recognition in Canada
12 and Mexico.

13 The total amount of all dues, fees, and other charges
14 collected by the ERO in each of the fiscal years
15 2006 through 2015 and allocated under subpara-
16 graph (B) shall not exceed \$50,000,000.

17 “(d) RELIABILITY STANDARDS.—(1) The Electric
18 Reliability Organization shall file each reliability standard
19 or modification to a reliability standard that it proposes
20 to be made effective under this section with the Commis-
21 sion.

22 “(2) The Commission may approve, by rule or order,
23 a proposed reliability standard or modification to a reli-
24 ability standard if it determines that the standard is just,
25 reasonable, not unduly discriminatory or preferential, and

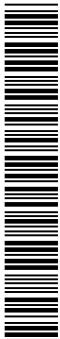


1 in the public interest. The Commission shall give due
2 weight to the technical expertise of the Electric Reliability
3 Organization with respect to the content of a proposed
4 standard or modification to a reliability standard and to
5 the technical expertise of a regional entity organized on
6 an Interconnection-wide basis with respect to a reliability
7 standard to be applicable within that Interconnection, but
8 shall not defer with respect to the effect of a standard
9 on competition. A proposed standard or modification shall
10 take effect upon approval by the Commission.

11 “(3) The Electric Reliability Organization shall
12 rebuttably presume that a proposal from a regional entity
13 organized on an Interconnection-wide basis for a reliability
14 standard or modification to a reliability standard to be ap-
15 plicable on an Interconnection-wide basis is just, reason-
16 able, and not unduly discriminatory or preferential, and
17 in the public interest.

18 “(4) The Commission shall remand to the Electric
19 Reliability Organization for further consideration a pro-
20 posed reliability standard or a modification to a reliability
21 standard that the Commission disapproves in whole or in
22 part.

23 “(5) The Commission, upon its own motion or upon
24 complaint, may order the Electric Reliability Organization
25 to submit to the Commission a proposed reliability stand-



1 ard or a modification to a reliability standard that ad-
2 dresses a specific matter if the Commission considers such
3 a new or modified reliability standard appropriate to carry
4 out this section.

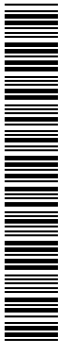
5 “(6) The final rule adopted under subsection (b)(2)
6 shall include fair processes for the identification and time-
7 ly resolution of any conflict between a reliability standard
8 and any function, rule, order, tariff, rate schedule, or
9 agreement accepted, approved, or ordered by the Commis-
10 sion applicable to a transmission organization. Such trans-
11 mission organization shall continue to comply with such
12 function, rule, order, tariff, rate schedule or agreement ac-
13 cepted approved, or ordered by the Commission until—

14 “(A) the Commission finds a conflict exists be-
15 tween a reliability standard and any such provision;

16 “(B) the Commission orders a change to such
17 provision pursuant to section 206 of this part; and

18 “(C) the ordered change becomes effective
19 under this part.

20 If the Commission determines that a reliability standard
21 needs to be changed as a result of such a conflict, it shall
22 order the ERO to develop and file with the Commission
23 a modified reliability standard under paragraph (4) or (5)
24 of this subsection.



1 “(e) ENFORCEMENT.—(1) The ERO may impose,
2 subject to paragraph (2), a penalty on a user or owner
3 or operator of the bulk-power system for a violation of a
4 reliability standard approved by the Commission under
5 subsection (d) if the ERO, after notice and an opportunity
6 for a hearing—

7 “(A) finds that the user or owner or operator
8 has violated a reliability standard approved by the
9 Commission under subsection (d); and

10 “(B) files notice and the record of the pro-
11 ceeding with the Commission.

12 “(2) A penalty imposed under paragraph (1) may
13 take effect not earlier than the 31st day after the ERO
14 files with the Commission notice of the penalty and the
15 record of proceedings. Such penalty shall be subject to re-
16 view by the Commission, on its own motion or upon appli-
17 cation by the user, owner or operator that is the subject
18 of the penalty filed within 30 days after the date such
19 notice is filed with the Commission. Application to the
20 Commission for review, or the initiation of review by the
21 Commission on its own motion, shall not operate as a stay
22 of such penalty unless the Commission otherwise orders
23 upon its own motion or upon application by the user,
24 owner or operator that is the subject of such penalty. In
25 any proceeding to review a penalty imposed under para-



1 graph (1), the Commission, after notice and opportunity
2 for hearing (which hearing may consist solely of the record
3 before the ERO and opportunity for the presentation of
4 supporting reasons to affirm, modify, or set aside the pen-
5 alty), shall by order affirm, set aside, reinstate, or modify
6 the penalty, and, if appropriate, remand to the ERO for
7 further proceedings. The Commission shall implement ex-
8 pedited procedures for such hearings.

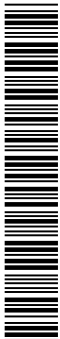
9 “(3) On its own motion or upon complaint, the Com-
10 mission may order compliance with a reliability standard
11 and may impose a penalty against a user or owner or oper-
12 ator of the bulk-power system if the Commission finds,
13 after notice and opportunity for a hearing, that the user
14 or owner or operator of the bulk-power system has en-
15 gaged or is about to engage in any acts or practices that
16 constitute or will constitute a violation of a reliability
17 standard.

18 “(4) The Commission shall issue regulations author-
19 izing the ERO to enter into an agreement to delegate au-
20 thority to a regional entity for the purpose of proposing
21 reliability standards to the ERO and enforcing reliability
22 standards under paragraph (1) if—

23 “(A) the regional entity is governed by—

24 “(i) an independent board;

25 “(ii) a balanced stakeholder board; or



1 “(iii) a combination independent and bal-
2 anced stakeholder board.

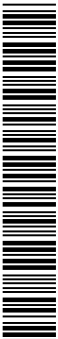
3 “(B) the regional entity otherwise satisfies the
4 provisions of subsection (c)(1) and (2); and

5 “(C) the agreement promotes effective and effi-
6 cient administration of bulk-power system reliability.

7 The Commission may modify such delegation. The ERO
8 and the Commission shall rebuttably presume that a pro-
9 posal for delegation to a regional entity organized on an
10 Interconnection-wide basis promotes effective and efficient
11 administration of bulk-power system reliability and should
12 be approved. Such regulation may provide that the Com-
13 mission may assign the ERO’s authority to enforce reli-
14 ability standards under paragraph (1) directly to a re-
15 gional entity consistent with the requirements of this para-
16 graph.

17 “(5) The Commission may take such action as is nec-
18 essary or appropriate against the ERO or a regional entity
19 to ensure compliance with a reliability standard or any
20 Commission order affecting the ERO or a regional entity.

21 “(6) Any penalty imposed under this section shall
22 bear a reasonable relation to the seriousness of the viola-
23 tion and shall take into consideration the efforts of such
24 user, owner, or operator to remedy the violation in a time-
25 ly manner.

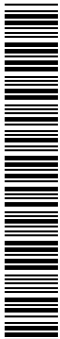


1 “(f) CHANGES IN ELECTRIC RELIABILITY ORGANIZA-
2 TION RULES.—The Electric Reliability Organization shall
3 file with the Commission for approval any proposed rule
4 or proposed rule change, accompanied by an explanation
5 of its basis and purpose. The Commission, upon its own
6 motion or complaint, may propose a change to the rules
7 of the ERO. A proposed rule or proposed rule change shall
8 take effect upon a finding by the Commission, after notice
9 and opportunity for comment, that the change is just, rea-
10 sonable, not unduly discriminatory or preferential, is in
11 the public interest, and satisfies the requirements of sub-
12 section (c).

13 “(g) RELIABILITY REPORTS.—The ERO shall con-
14 duct periodic assessments of the reliability and adequacy
15 of the bulk-power system in North America.

16 “(h) COORDINATION WITH CANADA AND MEXICO.—
17 The President is urged to negotiate international agree-
18 ments with the governments of Canada and Mexico to pro-
19 vide for effective compliance with reliability standards and
20 the effectiveness of the ERO in the United States and
21 Canada or Mexico.

22 “(i) SAVINGS PROVISIONS.—(1) The ERO shall have
23 authority to develop and enforce compliance with reli-
24 ability standards for only the bulk-power system.



1 “(2) This section does not authorize the ERO or the
2 Commission to order the construction of additional gen-
3 eration or transmission capacity or to set and enforce com-
4 pliance with standards for adequacy or safety of electric
5 facilities or services.

6 “(3) Nothing in this section shall be construed to pre-
7 empt any authority of any State to take action to ensure
8 the safety, adequacy, and reliability of electric service
9 within that State, as long as such action is not incon-
10 sistent with any reliability standard, except that the State
11 of New York may establish rules that result in greater
12 reliability within that State, as long as such action does
13 not result in lesser reliability outside the State than that
14 provided by the reliability standards.

15 “(4) Within 90 days of the application of the Electric
16 Reliability Organization or other affected party, and after
17 notice and opportunity for comment, the Commission shall
18 issue a final order determining whether a State action is
19 inconsistent with a reliability standard, taking into consid-
20 eration any recommendation of the ERO.

21 “(5) The Commission, after consultation with the
22 ERO and the State taking action, may stay the effective-
23 ness of any State action, pending the Commission’s
24 issuance of a final order.



1 “(j) REGIONAL ADVISORY BODIES.—The Commis-
2 sion shall establish a regional advisory body on the petition
3 of at least $\frac{2}{3}$ of the States within a region that have more
4 than $\frac{1}{2}$ of their electric load served within the region. A
5 regional advisory body shall be composed of 1 member
6 from each participating State in the region, appointed by
7 the Governor of each State, and may include representa-
8 tives of agencies, States, and provinces outside the United
9 States. A regional advisory body may provide advice to the
10 Electric Reliability Organization, a regional entity, or the
11 Commission regarding the governance of an existing or
12 proposed regional entity within the same region, whether
13 a standard proposed to apply within the region is just,
14 reasonable, not unduly discriminatory or preferential, and
15 in the public interest, whether fees proposed to be assessed
16 within the region are just, reasonable, not unduly discrimi-
17 natory or preferential, and in the public interest and any
18 other responsibilities requested by the Commission. The
19 Commission may give deference to the advice of any such
20 regional advisory body if that body is organized on an
21 Interconnection-wide basis.

22 “(k) ALASKA AND HAWAII.—The provisions of this
23 section do not apply to Alaska or Hawaii.”.

24 (b) STATUS OF ERO.—The Electric Reliability Orga-
25 nization certified by the Federal Energy Regulatory Com-



1 mission under section 215(c) of the Federal Power Act
2 and any regional entity delegated enforcement authority
3 pursuant to section 215(e)(4) of that Act are not depart-
4 ments, agencies, or instrumentalities of the United States
5 Government.

6 (c) LIMITATION ON ANNUAL APPROPRIATIONS.—
7 There is authorized to be appropriated not more than
8 \$50,000,000 per year for fiscal years 2006 through 2015
9 for all activities under the amendment made by subsection
10 (a).

11 **Subtitle B—Transmission**
12 **Infrastructure Modernization**

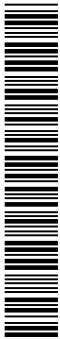
13 **SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS-**
14 **MISSION FACILITIES.**

15 (a) AMENDMENT OF FEDERAL POWER ACT.—Part
16 II of the Federal Power Act is amended by adding at the
17 end the following:

18 **“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS-**
19 **MISSION FACILITIES.**

20 **“(a) DESIGNATION OF NATIONAL INTEREST ELEC-**
21 **TRIC TRANSMISSION CORRIDORS.—**

22 **“(1) TRANSMISSION CONGESTION STUDY.—**
23 Within 1 year after the enactment of this section,
24 and every 3 years thereafter, the Secretary of En-
25 ergy, in consultation with affected States, shall con-

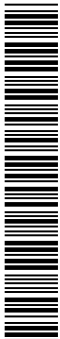


1 duct a study of electric transmission congestion.
2 After considering alternatives and recommendations
3 from interested parties, including an opportunity for
4 comment from affected States, the Secretary shall
5 issue a report, based on such study, which may des-
6 ignate any geographic area experiencing electric en-
7 ergy transmission capacity constraints or congestion
8 that adversely affects consumers as a national inter-
9 est electric transmission corridor. The Secretary
10 shall conduct the study and issue the report in con-
11 sultation with any appropriate regional entity ref-
12 erenced in section 215 of this Act.

13 “(2) CONSIDERATIONS.—In determining wheth-
14 er to designate a national interest electric trans-
15 mission corridor referred to in paragraph (1) under
16 this section, the Secretary may consider whether—

17 “(A) the economic vitality and development
18 of the corridor, or the end markets served by
19 the corridor, may be constrained by lack of ade-
20 quate or reasonably priced electricity;

21 “(B)(i) economic growth in the corridor, or
22 the end markets served by the corridor, may be
23 jeopardized by reliance on limited sources of en-
24 ergy; and



1 “(ii) a diversification of supply is war-
2 ranted;

3 “(C) the energy independence of the
4 United States would be served by the designa-
5 tion;

6 “(D) the designation would be in the inter-
7 est of national energy policy; and

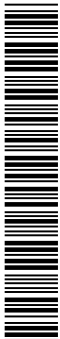
8 “(E) the designation would enhance na-
9 tional defense and homeland security.

10 “(b) CONSTRUCTION PERMIT.—Except as provided
11 in subsection (i), the Commission is authorized, after no-
12 tice and an opportunity for hearing, to issue a permit or
13 permits for the construction or modification of electric
14 transmission facilities in a national interest electric trans-
15 mission corridor designated by the Secretary under sub-
16 section (a) if the Commission finds that—

17 “(1)(A) a State in which the transmission fa-
18 cilities are to be constructed or modified is without
19 authority to—

20 “(i) approve the siting of the facilities; or

21 “(ii) consider the interstate benefits ex-
22 pected to be achieved by the proposed construc-
23 tion or modification of transmission facilities in
24 the State;



1 “(B) the applicant for a permit is a transmit-
2 ting utility under this Act but does not qualify to
3 apply for a permit or siting approval for the pro-
4 posed project in a State because the applicant does
5 not serve end-use customers in the State; or

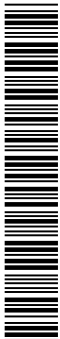
6 “(C) a State commission or other entity that
7 has authority to approve the siting of the facilities
8 has—

9 “(i) withheld approval for more than 1
10 year after the filing of an application pursuant
11 to applicable law seeking approval or 1 year
12 after the designation of the relevant national in-
13 terest electric transmission corridor, whichever
14 is later; or

15 “(ii) conditioned its approval in such a
16 manner that the proposed construction or modi-
17 fication will not significantly reduce trans-
18 mission congestion in interstate commerce or is
19 not economically feasible;

20 “(2) the facilities to be authorized by the per-
21 mit will be used for the transmission of electric en-
22 ergy in interstate commerce;

23 “(3) the proposed construction or modification
24 is consistent with the public interest;



1 “(4) the proposed construction or modification
2 will significantly reduce transmission congestion in
3 interstate commerce and protects or benefits con-
4 sumers; and

5 “(5) the proposed construction or modification
6 is consistent with sound national energy policy and
7 will enhance energy independence.

8 “(c) PERMIT APPLICATIONS.—Permit applications
9 under subsection (b) shall be made in writing to the Com-
10 mission. The Commission shall issue rules setting forth
11 the form of the application, the information to be con-
12 tained in the application, and the manner of service of no-
13 tice of the permit application upon interested persons.

14 “(d) COMMENTS.—In any proceeding before the
15 Commission under subsection (b), the Commission shall
16 afford each State in which a transmission facility covered
17 by the permit is or will be located, each affected Federal
18 agency and Indian tribe, private property owners, and
19 other interested persons, a reasonable opportunity to
20 present their views and recommendations with respect to
21 the need for and impact of a facility covered by the permit.

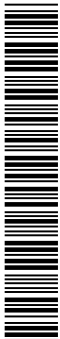
22 “(e) RIGHTS-OF-WAY.—In the case of a permit under
23 subsection (b) for electric transmission facilities to be lo-
24 cated on property other than property owned by the
25 United States or a State, if the permit holder cannot ac-



1 quire by contract, or is unable to agree with the owner
2 of the property to the compensation to be paid for, the
3 necessary right-of-way to construct or modify such trans-
4 mission facilities, the permit holder may acquire the right-
5 of-way by the exercise of the right of eminent domain in
6 the district court of the United States for the district in
7 which the property concerned is located, or in the appro-
8 priate court of the State in which the property is located.
9 The practice and procedure in any action or proceeding
10 for that purpose in the district court of the United States
11 shall conform as nearly as may be with the practice and
12 procedure in similar action or proceeding in the courts of
13 the State where the property is situated.

14 “(f) STATE LAW.—Nothing in this section shall pre-
15 clude any person from constructing or modifying any
16 transmission facility pursuant to State law.

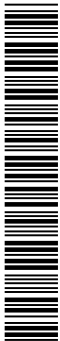
17 “(g) COMPENSATION.—Any exercise of eminent do-
18 main authority pursuant to this section shall be considered
19 a taking of private property for which just compensation
20 is due. Just compensation shall be an amount equal to
21 the full fair market value of the property taken on the
22 date of the exercise of eminent domain authority, except
23 that the compensation shall exceed fair market value if
24 necessary to make the landowner whole for decreases in
25 the value of any portion of the land not subject to eminent



1 domain. Any parcel of land acquired by eminent domain
2 under this subsection shall be transferred back to the
3 owner from whom it was acquired (or his heirs or assigns)
4 if the land is not used for the construction or modification
5 of electric transmission facilities within a reasonable pe-
6 riod of time after the acquisition. Other than construction,
7 modification, operation, or maintenance of electric trans-
8 mission facilities and related facilities, property acquired
9 under subsection (e) may not be used for any purpose (in-
10 cluding use for any heritage area, recreational trail, or
11 park) without the consent of the owner of the parcel from
12 whom the property was acquired (or the owner's heirs or
13 assigns).

14 “(h) COORDINATION OF FEDERAL AUTHORIZATIONS
15 FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—

16 “(1) LEAD AGENCY.—If an applicant, or pro-
17 spective applicant, for a Federal authorization re-
18 lated to an electric transmission or distribution facil-
19 ity so requests, the Department of Energy (DOE)
20 shall act as the lead agency for purposes of coordi-
21 nating all applicable Federal authorizations and re-
22 lated environmental reviews of the facility. For pur-
23 poses of this subsection, the term ‘Federal author-
24 ization’ means any authorization required under
25 Federal law in order to site a transmission or dis-



1 tribution facility, including but not limited to such
2 permits, special use authorizations, certifications,
3 opinions, or other approvals as may be required,
4 whether issued by a Federal or a State agency. To
5 the maximum extent practicable under applicable
6 Federal law, the Secretary of Energy shall coordi-
7 nate this Federal authorization and review process
8 with any Indian tribes, multi-State entities, and
9 State agencies that are responsible for conducting
10 any separate permitting and environmental reviews
11 of the facility, to ensure timely and efficient review
12 and permit decisions.

13 “(2) AUTHORITY TO SET DEADLINES.—As lead
14 agency, the Department of Energy, in consultation
15 with agencies responsible for Federal authorizations
16 and, as appropriate, with Indian tribes, multi-State
17 entities, and State agencies that are willing to co-
18 ordinate their own separate permitting and environ-
19 mental reviews with the Federal authorization and
20 environmental reviews, shall establish prompt and
21 binding intermediate milestones and ultimate dead-
22 lines for the review of, and Federal authorization de-
23 cisions relating to, the proposed facility. The Sec-
24 retary of Energy shall ensure that once an applica-
25 tion has been submitted with such data as the Sec-

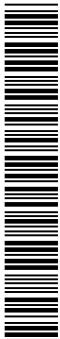


1 retary considers necessary, all permit decisions and
2 related environmental reviews under all applicable
3 Federal laws shall be completed within 1 year or, if
4 a requirement of another provision of Federal law
5 makes this impossible, as soon thereafter as is prac-
6 ticable. The Secretary of Energy also shall provide
7 an expeditious pre-application mechanism for pro-
8 spective applicants to confer with the agencies in-
9 volved to have each such agency determine and com-
10 municate to the prospective applicant within 60 days
11 of when the prospective applicant submits a request
12 for such information concerning—

13 “(A) the likelihood of approval for a poten-
14 tial facility; and

15 “(B) key issues of concern to the agencies
16 and public.

17 “(3) CONSOLIDATED ENVIRONMENTAL REVIEW
18 AND RECORD OF DECISION.—As lead agency head,
19 the Secretary of Energy, in consultation with the af-
20 fected agencies, shall prepare a single environmental
21 review document, which shall be used as the basis
22 for all decisions on the proposed project under Fed-
23 eral law. The document may be an environmental as-
24 sessment or environmental impact statement under
25 the National Environmental Policy Act of 1969 if



1 warranted, or such other form of analysis as may be
2 warranted. The Secretary of Energy and the heads
3 of other agencies shall streamline the review and
4 permitting of transmission and distribution facilities
5 within corridors designated under section 503 of the
6 Federal Land Policy and Management Act (43
7 U.S.C. 1763) by fully taking into account prior anal-
8 yses and decisions relating to the corridors. Such
9 document shall include consideration by the relevant
10 agencies of any applicable criteria or other matters
11 as required under applicable laws.

12 “(4) APPEALS.—In the event that any agency
13 has denied a Federal authorization required for a
14 transmission or distribution facility, or has failed to
15 act by the deadline established by the Secretary pur-
16 suant to this section for deciding whether to issue
17 the authorization, the applicant or any State in
18 which the facility would be located may file an ap-
19 peal with the Secretary, who shall, in consultation
20 with the affected agency, review the denial or take
21 action on the pending application. Based on the
22 overall record and in consultation with the affected
23 agency, the Secretary may then either issue the nec-
24 essary authorization with any appropriate condi-
25 tions, or deny the application. The Secretary shall



1 issue a decision within 90 days of the filing of the
2 appeal. In making a decision under this paragraph,
3 the Secretary shall comply with applicable require-
4 ments of Federal law, including any requirements of
5 the Endangered Species Act, the Clean Water Act,
6 the National Forest Management Act, the National
7 Environmental Policy Act of 1969, and the Federal
8 Land Policy and Management Act.

9 “(5) CONFORMING REGULATIONS AND MEMO-
10 RANDA OF UNDERSTANDING.—Not later than 18
11 months after the date of enactment of this section,
12 the Secretary of Energy shall issue any regulations
13 necessary to implement this subsection. Not later
14 than 1 year after the date of enactment of this sec-
15 tion, the Secretary and the heads of all Federal
16 agencies with authority to issue Federal authoriza-
17 tions shall enter into Memoranda of Understanding
18 to ensure the timely and coordinated review and per-
19 mitting of electricity transmission and distribution
20 facilities. The head of each Federal agency with au-
21 thority to issue a Federal authorization shall des-
22 ignate a senior official responsible for, and dedicate
23 sufficient other staff and resources to ensure, full
24 implementation of the DOE regulations and any
25 Memoranda. Interested Indian tribes, multi-State



1 entities, and State agencies may enter such Memo-
2 randa of Understanding.

3 “(6) DURATION AND RENEWAL.—Each Federal
4 land use authorization for an electricity transmission
5 or distribution facility shall be issued—

6 “(A) for a duration, as determined by the
7 Secretary of Energy, commensurate with the
8 anticipated use of the facility, and

9 “(B) with appropriate authority to manage
10 the right-of-way for reliability and environ-
11 mental protection.

12 Upon the expiration of any such authorization (in-
13 cluding an authorization issued prior to enactment
14 of this section), the authorization shall be reviewed
15 for renewal taking fully into account reliance on
16 such electricity infrastructure, recognizing its impor-
17 tance for public health, safety and economic welfare
18 and as a legitimate use of Federal lands.

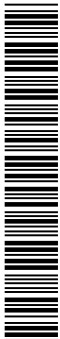
19 “(7) MAINTAINING AND ENHANCING THE
20 TRANSMISSION INFRASTRUCTURE.—In exercising the
21 responsibilities under this section, the Secretary of
22 Energy shall consult regularly with the Federal En-
23 ergy Regulatory Commission (FERC), FERC-ap-
24 proved electric reliability organizations (including re-
25 lated regional entities), and FERC-approved Re-



1 regional Transmission Organizations and Independent
2 System Operators.

3 “(i) INTERSTATE COMPACTS.—The consent of Con-
4 gress is hereby given for 3 or more contiguous States to
5 enter into an interstate compact, subject to approval by
6 Congress, establishing regional transmission siting agen-
7 cies to facilitate siting of future electric energy trans-
8 mission facilities within such States and to carry out the
9 electric energy transmission siting responsibilities of such
10 States. The Secretary of Energy may provide technical as-
11 sistance to regional transmission siting agencies estab-
12 lished under this subsection. Such regional transmission
13 siting agencies shall have the authority to review, certify,
14 and permit siting of transmission facilities, including fa-
15 cilities in national interest electric transmission corridors
16 (other than facilities on property owned by the United
17 States). The Commission shall have no authority to issue
18 a permit for the construction or modification of electric
19 transmission facilities within a State that is a party to
20 a compact, unless the members of a compact are in dis-
21 agreement and the Secretary makes, after notice and an
22 opportunity for a hearing, the finding described in section
23 (b)(1)(C).

24 “(j) SAVINGS CLAUSE.—Nothing in this section shall
25 be construed to affect any requirement of the environ-



1 mental laws of the United States, including, but not lim-
2 ited to, the National Environmental Policy Act of 1969.
3 Subsection (h)(4) of this section shall not apply to any
4 Congressionally-designated components of the National
5 Wilderness Preservation System, the National Wild and
6 Scenic Rivers System, or the National Park system (in-
7 cluding National Monuments therein).

8 “(k) ERCOT.—This section shall not apply within
9 the area referred to in section 212(k)(2)(A).”.

10 (b) REPORTS TO CONGRESS ON CORRIDORS AND
11 RIGHTS OF WAY ON FEDERAL LANDS.—The Secretary of
12 the Interior, the Secretary of Energy, the Secretary of Ag-
13 riculture, and the Chairman of the Council on Environ-
14 mental Quality shall, within 90 days of the date of enact-
15 ment of this subsection, submit a joint report to Congress
16 identifying each of the following:

17 (1) All existing designated transmission and
18 distribution corridors on Federal land and the status
19 of work related to proposed transmission and dis-
20 tribution corridor designations under Title V of the
21 Federal Land Policy and Management Act (43
22 U.S.C. 1761 et. Seq.), the schedule for completing
23 such work, any impediments to completing the work,
24 and steps that Congress could take to expedite the
25 process.



1 (2) The number of pending applications to lo-
2 cate transmission and distribution facilities on Fed-
3 eral lands, key information relating to each such fa-
4 cility, how long each application has been pending,
5 the schedule for issuing a timely decision as to each
6 facility, and progress in incorporating existing and
7 new such rights-of-way into relevant land use and
8 resource management plans or their equivalent.

9 (3) The number of existing transmission and
10 distribution rights-of-way on Federal lands that will
11 come up for renewal within the following 5, 10, and
12 15 year periods, and a description of how the Secre-
13 taries plan to manage such renewals.

14 **SEC. 1222. THIRD-PARTY FINANCE.**

15 (a) EXISTING FACILITIES.—The Secretary of Energy
16 (hereinafter in this section referred to as the “Secretary”),
17 acting through the Administrator of the Western Area
18 Power Administration (hereinafter in this section referred
19 to as “WAPA”), or through the Administrator of the
20 Southwestern Power Administration (hereinafter in this
21 section referred to as “SWPA”), or both, may design, de-
22 velop, construct, operate, maintain, or own, or participate
23 with other entities in designing, developing, constructing,
24 operating, maintaining, or owning, an electric power
25 transmission facility and related facilities (“Project”)



1 needed to upgrade existing transmission facilities owned
2 by SWPA or WAPA if the Secretary of Energy, in con-
3 sultation with the applicable Administrator, determines
4 that the proposed Project—

5 (1)(A) is located in a national interest electric
6 transmission corridor designated under section
7 216(a) of the Federal Power Act and will reduce
8 congestion of electric transmission in interstate com-
9 merce; or

10 (B) is necessary to accommodate an actual or
11 projected increase in demand for electric trans-
12 mission capacity;

13 (2) is consistent with—

14 (A) transmission needs identified, in a
15 transmission expansion plan or otherwise, by
16 the appropriate Regional Transmission Organi-
17 zation or Independent System Operator (as de-
18 fined in the Federal Power Act), if any, or ap-
19 proved regional reliability organization; and

20 (B) efficient and reliable operation of the
21 transmission grid; and

22 (3) would be operated in conformance with pru-
23 dent utility practice.

24 (b) NEW FACILITIES.—The Secretary, acting
25 through WAPA or SWPA, or both, may design, develop,



1 construct, operate, maintain, or own, or participate with
2 other entities in designing, developing, constructing, oper-
3 ating, maintaining, or owning, a new electric power trans-
4 mission facility and related facilities (“Project”) located
5 within any State in which WAPA or SWPA operates if
6 the Secretary, in consultation with the applicable Adminis-
7 trator, determines that the proposed Project—

8 (1)(A) is located in an area designated under
9 section 216(a) of the Federal Power Act and will re-
10 duce congestion of electric transmission in interstate
11 commerce; or

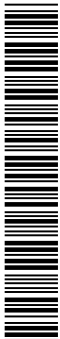
12 (B) is necessary to accommodate an actual or
13 projected increase in demand for electric trans-
14 mission capacity;

15 (2) is consistent with—

16 (A) transmission needs identified, in a
17 transmission expansion plan or otherwise, by
18 the appropriate Regional Transmission Organi-
19 zation or Independent System Operator, if any,
20 or approved regional reliability organization;
21 and

22 (B) efficient and reliable operation of the
23 transmission grid;

24 (3) will be operated in conformance with pru-
25 dent utility practice;



1 (4) will be operated by, or in conformance with
2 the rules of, the appropriate (A) Regional Trans-
3 mission Organization or Independent System Oper-
4 ator, if any, or (B) if such an organization does not
5 exist, regional reliability organization; and

6 (5) will not duplicate the functions of existing
7 transmission facilities or proposed facilities which
8 are the subject of ongoing or approved siting and re-
9 lated permitting proceedings.

10 (c) OTHER FUNDS.—

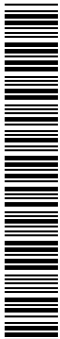
11 (1) IN GENERAL.—In carrying out a Project
12 under subsection (a) or (b), the Secretary may ac-
13 cept and use funds contributed by another entity for
14 the purpose of carrying out the Project.

15 (2) AVAILABILITY.—The contributed funds
16 shall be available for expenditure for the purpose of
17 carrying out the Project—

18 (A) without fiscal year limitation; and

19 (B) as if the funds had been appropriated
20 specifically for that Project.

21 (3) ALLOCATION OF COSTS.—In carrying out a
22 Project under subsection (a) or (b), any costs of the
23 Project not paid for by contributions from another
24 entity shall be collected through rates charged to
25 customers using the new transmission capability pro-



1 vided by the Project and allocated equitably among
2 these project beneficiaries using the new trans-
3 mission capability.

4 (d) RELATIONSHIP TO OTHER LAWS.—Nothing in
5 this section affects any requirement of—

6 (1) any Federal environmental law, including
7 the National Environmental Policy Act of 1969 (42
8 U.S.C. 4321 et seq.);

9 (2) any Federal or State law relating to the
10 siting of energy facilities; or

11 (3) any existing authorizing statutes.

12 (e) SAVINGS CLAUSE.—Nothing in this section shall
13 constrain or restrict an Administrator in the utilization
14 of other authority delegated to the Administrator of
15 WAPA or SWPA.

16 (f) SECRETARIAL DETERMINATIONS.—Any deter-
17 mination made pursuant to subsections (a) or (b) shall
18 be based on findings by the Secretary using the best avail-
19 able data.

20 (g) MAXIMUM FUNDING AMOUNT.—The Secretary
21 shall not accept and use more than \$100,000,000 under
22 subsection (c)(1) for the period encompassing fiscal years
23 2006 through 2015.



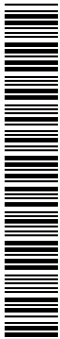
1 **SEC. 1223. TRANSMISSION SYSTEM MONITORING.**

2 Within 6 months after the date of enactment of this
3 Act, the Secretary of Energy and the Federal Energy Reg-
4 ulatory Commission shall study and report to Congress on
5 the steps which must be taken to establish a system to
6 make available to all transmission system owners and Re-
7 gional Transmission Organizations (as defined in the Fed-
8 eral Power Act) within the Eastern and Western Inter-
9 connections real-time information on the functional status
10 of all transmission lines within such Interconnections. In
11 such study, the Commission shall assess technical means
12 for implementing such transmission information system
13 and identify the steps the Commission or Congress must
14 take to require the implementation of such system.

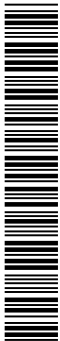
15 **SEC. 1224. ADVANCED TRANSMISSION TECHNOLOGIES.**

16 (a) **AUTHORITY.**—The Federal Energy Regulatory
17 Commission, in the exercise of its authorities under the
18 Federal Power Act and the Public Utility Regulatory Poli-
19 cies Act of 1978, shall encourage the deployment of ad-
20 vanced transmission technologies.

21 (b) **DEFINITION.**—For the purposes of this section,
22 the term “advanced transmission technologies” means
23 technologies that increase the capacity, efficiency, or reli-
24 ability of existing or new transmission facilities, including,
25 but not limited to—



- 1 (1) high-temperature lines (including super-
- 2 conducting cables);
- 3 (2) underground cables;
- 4 (3) advanced conductor technology (including
- 5 advanced composite conductors, high-temperature
- 6 low-sag conductors, and fiber optic temperature
- 7 sensing conductors);
- 8 (4) high-capacity ceramic electric wire, connec-
- 9 tors, and insulators;
- 10 (5) optimized transmission line configurations
- 11 (including multiple phased transmission lines);
- 12 (6) modular equipment;
- 13 (7) wireless power transmission;
- 14 (8) ultra-high voltage lines;
- 15 (9) high-voltage DC technology;
- 16 (10) flexible AC transmission systems;
- 17 (11) energy storage devices (including pumped
- 18 hydro, compressed air, superconducting magnetic en-
- 19 ergy storage, flywheels, and batteries);
- 20 (12) controllable load;
- 21 (13) distributed generation (including PV, fuel
- 22 cells, microturbines);
- 23 (14) enhanced power device monitoring;
- 24 (15) direct system state sensors;
- 25 (16) fiber optic technologies;



1 (17) power electronics and related software (in-
2 cluding real time monitoring and analytical soft-
3 ware); and

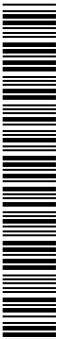
4 (18) any other technologies the Commission
5 considers appropriate.

6 (c) OBSOLETE OR IMPRACTICABLE TECH-
7 NOLOGIES.—The Commission is authorized to cease en-
8 couraging the deployment of any technology described in
9 this section on a finding that such technology has been
10 rendered obsolete or otherwise impracticable to deploy.

11 **SEC. 1225. ELECTRIC TRANSMISSION AND DISTRIBUTION**
12 **PROGRAMS.**

13 (a) ELECTRIC TRANSMISSION AND DISTRIBUTION
14 PROGRAM.—The Secretary of Energy (hereinafter in this
15 section referred to as the “Secretary”) acting through the
16 Director of the Office of Electric Transmission and Dis-
17 tribution shall establish a comprehensive research, devel-
18 opment, demonstration and commercial application pro-
19 gram to promote improved reliability and efficiency of
20 electrical transmission and distribution systems. This pro-
21 gram shall include—

22 (1) advanced energy delivery and storage tech-
23 nologies, materials, and systems, including new
24 transmission technologies, such as flexible alter-
25 nating current transmission systems, composite con-



1 ductor materials and other technologies that enhance
2 reliability, operational flexibility, or power-carrying
3 capability;

4 (2) advanced grid reliability and efficiency tech-
5 nology development;

6 (3) technologies contributing to significant load
7 reductions;

8 (4) advanced metering, load management, and
9 control technologies;

10 (5) technologies to enhance existing grid compo-
11 nents;

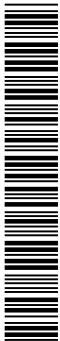
12 (6) the development and use of high-tempera-
13 ture superconductors to—

14 (A) enhance the reliability, operational
15 flexibility, or power-carrying capability of elec-
16 tric transmission or distribution systems; or

17 (B) increase the efficiency of electric en-
18 ergy generation, transmission, distribution, or
19 storage systems;

20 (7) integration of power systems, including sys-
21 tems to deliver high-quality electric power, electric
22 power reliability, and combined heat and power;

23 (8) supply of electricity to the power grid by
24 small scale, distributed and residential-based power
25 generators;



1 (9) the development and use of advanced grid
2 design, operation and planning tools;

3 (10) any other infrastructure technologies, as
4 appropriate; and

5 (11) technology transfer and education.

6 (b) PROGRAM PLAN.—Not later than 1 year after the
7 date of the enactment of this legislation, the Secretary,
8 in consultation with other appropriate Federal agencies,
9 shall prepare and transmit to Congress a 5-year program
10 plan to guide activities under this section. In preparing
11 the program plan, the Secretary may consult with utilities,
12 energy services providers, manufacturers, institutions of
13 higher education, other appropriate State and local agen-
14 cies, environmental organizations, professional and tech-
15 nical societies, and any other persons the Secretary con-
16 siders appropriate.

17 (c) IMPLEMENTATION.—The Secretary shall consider
18 implementing this program using a consortium of indus-
19 try, university and national laboratory participants.

20 (d) REPORT.—Not later than 2 years after the trans-
21 mittal of the plan under subsection (b), the Secretary shall
22 transmit a report to Congress describing the progress
23 made under this section and identifying any additional re-
24 sources needed to continue the development and commer-



1 cial application of transmission and distribution infra-
2 structure technologies.

3 (e) POWER DELIVERY RESEARCH INITIATIVE.—

4 (1) IN GENERAL.—The Secretary shall establish
5 a research, development, demonstration, and com-
6 mercial application initiative specifically focused on
7 power delivery utilizing components incorporating
8 high temperature superconductivity.

9 (2) GOALS.—The goals of this initiative shall be
10 to—

11 (A) establish facilities to develop high tem-
12 perature superconductivity power applications
13 in partnership with manufacturers and utilities;

14 (B) provide technical leadership for estab-
15 lishing reliability for high temperature super-
16 conductivity power applications including suit-
17 able modeling and analysis;

18 (C) facilitate commercial transition toward
19 direct current power transmission, storage, and
20 use for high power systems utilizing high tem-
21 perature superconductivity; and

22 (D) facilitate the integration of very low
23 impedance high temperature superconducting
24 wires and cables in existing electric networks to



1 improve system performance, power flow control
2 and reliability.

3 (3) REQUIREMENTS.—The initiative shall
4 include—

5 (A) feasibility analysis, planning, research,
6 and design to construct demonstrations of
7 superconducting links in high power, direct cur-
8 rent and controllable alternating current trans-
9 mission systems;

10 (B) public-private partnerships to dem-
11 onstrate deployment of high temperature super-
12 conducting cable into testbeds simulating a re-
13 alistic transmission grid and under varying
14 transmission conditions, including actual grid
15 insertions; and

16 (C) testbeds developed in cooperation with
17 national laboratories, industries, and univer-
18 sities to demonstrate these technologies, pre-
19 pare the technologies for commercial introduc-
20 tion, and address cost or performance road-
21 blocks to successful commercial use.

22 (4) AUTHORIZATION OF APPROPRIATIONS.—For
23 purposes of carrying out this subsection, there are
24 authorized to be appropriated—

25 (A) for fiscal year 2006, \$15,000,000;



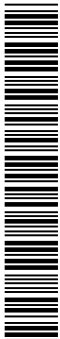
- 1 (B) for fiscal year 2007, \$20,000,000;
2 (C) for fiscal year 2008, \$30,000,000;
3 (D) for fiscal year 2009, \$35,000,000; and
4 (E) for fiscal year 2010, \$40,000,000.

5 **SEC. 1226. ADVANCED POWER SYSTEM TECHNOLOGY IN-**
6 **CENTIVE PROGRAM.**

7 (a) PROGRAM.—The Secretary of Energy is author-
8 ized to establish an Advanced Power System Technology
9 Incentive Program to support the deployment of certain
10 advanced power system technologies and to improve and
11 protect certain critical governmental, industrial, and com-
12 mercial processes. Funds provided under this section shall
13 be used by the Secretary to make incentive payments to
14 eligible owners or operators of advanced power system
15 technologies to increase power generation through en-
16 hanced operational, economic, and environmental perform-
17 ance. Payments under this section may only be made upon
18 receipt by the Secretary of an incentive payment applica-
19 tion establishing an applicant as either—

- 20 (1) a qualifying advanced power system tech-
21 nology facility; or
22 (2) a qualifying security and assured power fa-
23 cility.

24 (b) INCENTIVES.—Subject to availability of funds, a
25 payment of 1.8 cents per kilowatt-hour shall be paid to



1 the owner or operator of a qualifying advanced power sys-
2 tem technology facility under this section for electricity
3 generated at such facility. An additional 0.7 cents per kilo-
4 watt-hour shall be paid to the owner or operator of a quali-
5 fying security and assured power facility for electricity
6 generated at such facility. Any facility qualifying under
7 this section shall be eligible for an incentive payment for
8 up to, but not more than, the first 10,000,000 kilowatt-
9 hours produced in any fiscal year.

10 (c) ELIGIBILITY.—For purposes of this section:

11 (1) QUALIFYING ADVANCED POWER SYSTEM
12 TECHNOLOGY FACILITY.—The term “qualifying ad-
13 vanced power system technology facility” means a
14 facility using an advanced fuel cell, turbine, or hy-
15 brid power system or power storage system to gen-
16 erate or store electric energy.

17 (2) QUALIFYING SECURITY AND ASSURED
18 POWER FACILITY.—The term “qualifying security
19 and assured power facility” means a qualifying ad-
20 vanced power system technology facility determined
21 by the Secretary of Energy, in consultation with the
22 Secretary of Homeland Security, to be in critical
23 need of secure, reliable, rapidly available, high-qual-
24 ity power for critical governmental, industrial, or
25 commercial applications.



1 (d) AUTHORIZATION.—There are authorized to be ap-
2 propriated to the Secretary of Energy for the purposes
3 of this section, \$10,000,000 for each of the fiscal years
4 2006 through 2012.

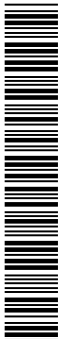
5 **SEC. 1227. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
6 **TRIBUTION.**

7 (a) CREATION OF AN OFFICE OF ELECTRIC TRANS-
8 MISSION AND DISTRIBUTION.—Title II of the Department
9 of Energy Organization Act (42 U.S.C. 7131 et seq.) (as
10 amended by section 502(a) of this Act) is amended by in-
11 serting the following after section 217, as added by title
12 V of this Act:

13 **“SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**
14 **TRIBUTION.**

15 “(a) ESTABLISHMENT.—There is established within
16 the Department an Office of Electric Transmission and
17 Distribution. This Office shall be headed by a Director,
18 subject to the authority of the Secretary. The Director
19 shall be appointed by the Secretary. The Director shall
20 be compensated at the annual rate prescribed for level IV
21 of the Executive Schedule under section 5315 of title 5,
22 United States Code.

23 “(b) DIRECTOR.—The Director shall—



1 “(1) coordinate and develop a comprehensive,
2 multi-year strategy to improve the Nation’s elec-
3 tricity transmission and distribution;

4 “(2) implement or, where appropriate, coordi-
5 nate the implementation of, the recommendations
6 made in the Secretary’s May 2002 National Trans-
7 mission Grid Study;

8 “(3) oversee research, development, and dem-
9 onstration to support Federal energy policy related
10 to electricity transmission and distribution;

11 “(4) grant authorizations for electricity import
12 and export pursuant to section 202(c), (d), (e), and
13 (f) of the Federal Power Act (16 U.S.C. 824a);

14 “(5) perform other functions, assigned by the
15 Secretary, related to electricity transmission and dis-
16 tribution; and

17 “(6) develop programs for workforce training in
18 power and transmission engineering.”.

19 (b) CONFORMING AMENDMENTS.—(1) The table of
20 contents of the Department of Energy Organization Act
21 (42 U.S.C. 7101 note) is amended by inserting after the
22 item relating to section 217 the following new item:

“Sec. 218. Office of Electric Transmission and Distribution.”.

23 (2) Section 5315 of title 5, United States Code, is
24 amended by inserting after the item relating to “Inspector
25 General, Department of Energy.” the following:



1 “Director, Office of Electric Transmission and
2 Distribution, Department of Energy.”.

3 **Subtitle C—Transmission**
4 **Operation Improvements**

5 **SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.**

6 Part II of the Federal Power Act (16 U.S.C. 824 et
7 seq.) is amended by inserting after section 211 the fol-
8 lowing new section:

9 **“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-**
10 **TING UTILITIES.**

11 “(a) TRANSMISSION SERVICES.—Subject to section
12 212(h), the Commission may, by rule or order, require an
13 unregulated transmitting utility to provide transmission
14 services—

15 “(1) at rates that are comparable to those that
16 the unregulated transmitting utility charges itself;
17 and

18 “(2) on terms and conditions (not relating to
19 rates) that are comparable to those under which
20 such unregulated transmitting utility provides trans-
21 mission services to itself and that are not unduly
22 discriminatory or preferential.

23 “(b) EXEMPTION.—The Commission shall exempt
24 from any rule or order under this section any unregulated
25 transmitting utility that—



1 “(1) sells no more than 4,000,000 megawatt
2 hours of electricity per year; or

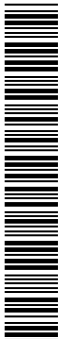
3 “(2) does not own or operate any transmission
4 facilities that are necessary for operating an inter-
5 connected transmission system (or any portion
6 thereof); or

7 “(3) meets other criteria the Commission deter-
8 mines to be in the public interest.

9 “(c) LOCAL DISTRIBUTION FACILITIES.—The re-
10 quirements of subsection (a) shall not apply to facilities
11 used in local distribution.

12 “(d) EXEMPTION TERMINATION.—Whenever the
13 Commission, after an evidentiary hearing held upon a
14 complaint and after giving consideration to reliability
15 standards established under section 215, finds on the
16 basis of a preponderance of the evidence that any exemp-
17 tion granted pursuant to subsection (b) unreasonably im-
18 pairs the continued reliability of an interconnected trans-
19 mission system, it shall revoke the exemption granted to
20 that transmitting utility.

21 “(e) APPLICATION TO UNREGULATED TRANSMIT-
22 TING UTILITIES.—The rate changing procedures applica-
23 ble to public utilities under subsections (c) and (d) of sec-
24 tion 205 are applicable to unregulated transmitting utili-
25 ties for purposes of this section.



1 “(f) REMAND.—In exercising its authority under
2 paragraph (1) of subsection (a), the Commission may re-
3 mand transmission rates to an unregulated transmitting
4 utility for review and revision where necessary to meet the
5 requirements of subsection (a).

6 “(g) OTHER REQUESTS.—The provision of trans-
7 mission services under subsection (a) does not preclude a
8 request for transmission services under section 211.

9 “(h) LIMITATION.—The Commission may not require
10 a State or municipality to take action under this section
11 that would violate a private activity bond rule for purposes
12 of section 141 of the Internal Revenue Code of 1986 (26
13 U.S.C. 141).

14 “(i) TRANSFER OF CONTROL OF TRANSMITTING FA-
15 CILITIES.—Nothing in this section authorizes the Commis-
16 sion to require an unregulated transmitting utility to
17 transfer control or operational control of its transmitting
18 facilities to an RTO or any other Commission-approved
19 independent transmission organization designated to pro-
20 vide nondiscriminatory transmission access.

21 “(j) DEFINITION.—For purposes of this section, the
22 term ‘unregulated transmitting utility’ means an entity
23 that—



1 “(1) owns or operates facilities used for the
2 transmission of electric energy in interstate com-
3 merce; and

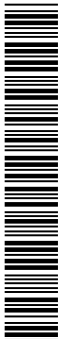
4 “(2) is an entity described in section 201(f).”.

5 **SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANS-**
6 **MISSION ORGANIZATIONS.**

7 It is the sense of Congress that, in order to promote
8 fair, open access to electric transmission service, benefit
9 retail consumers, facilitate wholesale competition, improve
10 efficiencies in transmission grid management, promote
11 grid reliability, remove opportunities for unduly discrimi-
12 natory or preferential transmission practices, and provide
13 for the efficient development of transmission infrastruc-
14 ture needed to meet the growing demands of competitive
15 wholesale power markets, all transmitting utilities in inter-
16 state commerce should voluntarily become members of Re-
17 gional Transmission Organizations as defined in section
18 3 of the Federal Power Act.

19 **SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION AP-**
20 **PLICATIONS PROGRESS REPORT.**

21 Not later than 120 days after the date of enactment
22 of this section, the Federal Energy Regulatory Commis-
23 sion shall submit to Congress a report containing each of
24 the following:

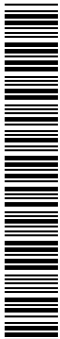


1 (1) A list of all regional transmission organiza-
2 tion applications filed at the Commission pursuant
3 to subpart F of part 35 of title 18, Code of Federal
4 Regulations (in this section referred to as “Order
5 No. 2000”), including an identification of each pub-
6 lic utility and other entity included within the pro-
7 posed membership of the regional transmission orga-
8 nization.

9 (2) A brief description of the status of each
10 pending regional transmission organization applica-
11 tion, including a precise explanation of how each
12 fails to comply with the minimal requirements of
13 Order No. 2000 and what steps need to be taken to
14 bring each application into such compliance.

15 (3) For any application that has not been fi-
16 nally approved by the Commission, a detailed de-
17 scription of every aspect of the application that the
18 Commission has determined does not conform to the
19 requirements of Order No. 2000.

20 (4) For any application that has not been fi-
21 nally approved by the Commission, an explanation
22 by the Commission of why the items described pur-
23 suant to paragraph (3) constitute material non-
24 compliance with the requirements of the Commis-



1 sion's Order No. 2000 sufficient to justify denial of
2 approval by the Commission.

3 (5) For all regional transmission organization
4 applications filed pursuant to the Commission's
5 Order No. 2000, whether finally approved or not—

6 (A) a discussion of that regional trans-
7 mission organization's efforts to minimize rate
8 seams between itself and—

9 (i) other regional transmission organi-
10 zations; and

11 (ii) entities not participating in a re-
12 gional transmission organization;

13 (B) a discussion of the impact of such
14 seams on consumers and wholesale competition;
15 and

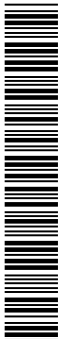
16 (C) a discussion of minimizing cost-shifting
17 on consumers.

18 **SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL**
19 **TRANSMISSION ORGANIZATIONS.**

20 (a) DEFINITIONS.—For purposes of this section—

21 (1) APPROPRIATE FEDERAL REGULATORY AU-
22 THORITY.—The term “appropriate Federal regu-
23 latory authority” means—

24 (A) with respect to a Federal power mar-
25 keting agency (as defined in the Federal Power



1 Act), the Secretary of Energy, except that the
2 Secretary may designate the Administrator of a
3 Federal power marketing agency to act as the
4 appropriate Federal regulatory authority with
5 respect to the transmission system of that Fed-
6 eral power marketing agency; and

7 (B) with respect to the Tennessee Valley
8 Authority, the Board of Directors of the Ten-
9 nessee Valley Authority.

10 (2) FEDERAL UTILITY.—The term “Federal
11 utility” means a Federal power marketing agency or
12 the Tennessee Valley Authority.

13 (3) TRANSMISSION SYSTEM.—The term “trans-
14 mission system” means electric transmission facili-
15 ties owned, leased, or contracted for by the United
16 States and operated by a Federal utility.

17 (b) TRANSFER.—The appropriate Federal regulatory
18 authority is authorized to enter into a contract, agreement
19 or other arrangement transferring control and use of all
20 or part of the Federal utility’s transmission system to an
21 RTO or ISO (as defined in the Federal Power Act), ap-
22 proved by the Federal Energy Regulatory Commission.
23 Such contract, agreement or arrangement shall include—

24 (1) performance standards for operation and
25 use of the transmission system that the head of the



1 Federal utility determines necessary or appropriate,
2 including standards that assure recovery of all the
3 Federal utility's costs and expenses related to the
4 transmission facilities that are the subject of the
5 contract, agreement or other arrangement; consist-
6 ency with existing contracts and third-party financ-
7 ing arrangements; and consistency with said Federal
8 utility's statutory authorities, obligations, and limi-
9 tations;

10 (2) provisions for monitoring and oversight by
11 the Federal utility of the RTO's or ISO's fulfillment
12 of the terms and conditions of the contract, agree-
13 ment or other arrangement, including a provision for
14 the resolution of disputes through arbitration or
15 other means with the regional transmission organi-
16 zation or with other participants, notwithstanding
17 the obligations and limitations of any other law re-
18 garding arbitration; and

19 (3) a provision that allows the Federal utility to
20 withdraw from the RTO or ISO and terminate the
21 contract, agreement or other arrangement in accord-
22 ance with its terms.

23 Neither this section, actions taken pursuant to it, nor any
24 other transaction of a Federal utility using an RTO or
25 ISO shall confer upon the Federal Energy Regulatory



1 Commission jurisdiction or authority over the Federal util-
2 ity's electric generation assets, electric capacity or energy
3 that the Federal utility is authorized by law to market,
4 or the Federal utility's power sales activities.

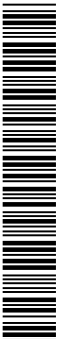
5 (c) EXISTING STATUTORY AND OTHER OBLIGA-
6 TIONS.—

7 (1) SYSTEM OPERATION REQUIREMENTS.—No
8 statutory provision requiring or authorizing a Fed-
9 eral utility to transmit electric power or to construct,
10 operate or maintain its transmission system shall be
11 construed to prohibit a transfer of control and use
12 of its transmission system pursuant to, and subject
13 to all requirements of subsection (b).

14 (2) OTHER OBLIGATIONS.—This subsection
15 shall not be construed to—

16 (A) suspend, or exempt any Federal utility
17 from, any provision of existing Federal law, in-
18 cluding but not limited to any requirement or
19 direction relating to the use of the Federal util-
20 ity's transmission system, environmental protec-
21 tion, fish and wildlife protection, flood control,
22 navigation, water delivery, or recreation; or

23 (B) authorize abrogation of any contract
24 or treaty obligation.

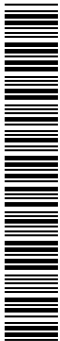


1 (3) REPEAL.—Section 311 of title III of Appen-
2 dix B of the Act of October 27, 2000 (P.L. 106–
3 377, section 1(a)(2); 114 Stat. 1441, 1441A–80; 16
4 U.S.C. 824n) is repealed.

5 **SEC. 1235. STANDARD MARKET DESIGN.**

6 (a) REMAND.—The Commission’s proposed rule-
7 making entitled “Remedying Undue Discrimination
8 through Open Access Transmission Service and Standard
9 Electricity Market Design” (Docket No. RM01–12–000)
10 (“SMD NOPR”) is remanded to the Commission for re-
11 consideration. No final rule mandating a standard elec-
12 tricity market design pursuant to the proposed rule-
13 making, including any rule or order of general applica-
14 bility within the scope of the proposed rulemaking, may
15 be issued before October 31, 2006, or take effect before
16 December 31, 2006. Any final rule issued by the Commis-
17 sion pursuant to the proposed rulemaking shall be pre-
18 ceded by a second notice of proposed rulemaking issued
19 after the date of enactment of this Act and an opportunity
20 for public comment.

21 (b) SAVINGS CLAUSE.—This section shall not be con-
22 strued to modify or diminish any authority or obligation
23 the Commission has under this Act, the Federal Power
24 Act, or other applicable law, including, but not limited to,
25 any authority to—



1 (1) issue any rule or order (of general or par-
2 ticular applicability) pursuant to any such authority
3 or obligation; or

4 (2) act on a filing or filings by 1 or more trans-
5 mitting utilities for the voluntary formation of a Re-
6 gional Transmission Organization or Independent
7 System Operator (as defined in the Federal Power
8 Act) (and related market structures or rules) or vol-
9 untary modification of an existing Regional Trans-
10 mission Organization or Independent System Oper-
11 ator (and related market structures or rules).

12 **SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.**

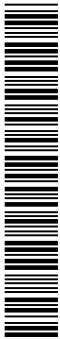
13 Part II of the Federal Power Act (16 U.S.C. 824 et
14 seq.) is amended by adding at the end the following:

15 **“SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

16 “(a) MEETING SERVICE OBLIGATIONS.—(1) Any
17 load-serving entity that, as of the date of enactment of
18 this section—

19 “(A) owns generation facilities, markets the
20 output of Federal generation facilities, or holds
21 rights under 1 or more wholesale contracts to pur-
22 chase electric energy, for the purpose of meeting a
23 service obligation, and

24 “(B) by reason of ownership of transmission fa-
25 cilities, or 1 or more contracts or service agreements



1 for firm transmission service, holds firm trans-
2 mission rights for delivery of the output of such gen-
3 eration facilities or such purchased energy to meet
4 such service obligation,
5 is entitled to use such firm transmission rights, or, equiva-
6 lent tradable or financial transmission rights, in order to
7 deliver such output or purchased energy, or the output of
8 other generating facilities or purchased energy to the ex-
9 tent deliverable using such rights, to the extent required
10 to meet its service obligation.

11 “(2) To the extent that all or a portion of the service
12 obligation covered by such firm transmission rights or
13 equivalent tradable or financial transmission rights is
14 transferred to another load-serving entity, the successor
15 load-serving entity shall be entitled to use the firm trans-
16 mission rights or equivalent tradable or financial trans-
17 mission rights associated with the transferred service obli-
18 gation. Subsequent transfers to another load-serving enti-
19 ty, or back to the original load-serving entity, shall be enti-
20 tled to the same rights.

21 “(3) The Commission shall exercise its authority
22 under this Act in a manner that facilitates the planning
23 and expansion of transmission facilities to meet the rea-
24 sonable needs of load-serving entities to satisfy their serv-
25 ice obligations.



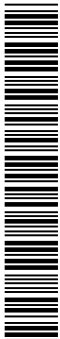
1 “(b) ALLOCATION OF TRANSMISSION RIGHTS.—
2 Nothing in this section shall affect any methodology ap-
3 proved by the Commission prior to September 15, 2003,
4 for the allocation of transmission rights by an RTO or
5 ISO that has been authorized by the Commission to allo-
6 cate transmission rights.

7 “(c) CERTAIN TRANSMISSION RIGHTS.—The Com-
8 mission may exercise authority under this Act to make
9 transmission rights not used to meet an obligation covered
10 by subsection (a) available to other entities in a manner
11 determined by the Commission to be just, reasonable, and
12 not unduly discriminatory or preferential.

13 “(d) OBLIGATION TO BUILD.—Nothing in this Act
14 shall relieve a load-serving entity from any obligation
15 under State or local law to build transmission or distribu-
16 tion facilities adequate to meet its service obligations.

17 “(e) CONTRACTS.—Nothing in this section shall pro-
18 vide a basis for abrogating any contract or service agree-
19 ment for firm transmission service or rights in effect as
20 of the date of the enactment of this subsection.

21 “(f) WATER PUMPING FACILITIES.—The Commis-
22 sion shall ensure that any entity described in section
23 201(f) that owns transmission facilities used predomi-
24 nately to support its own water pumping facilities shall
25 have, with respect to such facilities, protections for trans-



1 mission service comparable to those provided to load-serv-
2 ing entities pursuant to this section.

3 “(g) ERCOT.—This section shall not apply within
4 the area referred to in section 212(k)(2)(A).

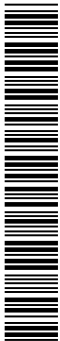
5 “(h) JURISDICTION.—This section does not authorize
6 the Commission to take any action not otherwise within
7 its jurisdiction.

8 “(i) EFFECT OF EXERCISING RIGHTS.—An entity
9 that lawfully exercises rights granted under subsection (a)
10 shall not be considered by such action as engaging in
11 undue discrimination or preference under this Act.

12 “(j) TVA AREA.—For purposes of subsection
13 (a)(1)(B), a load-serving entity that is located within the
14 service area of the Tennessee Valley Authority and that
15 has a firm wholesale power supply contract with the Ten-
16 nessee Valley Authority shall be deemed to hold firm
17 transmission rights for the transmission of such power.

18 “(k) DEFINITIONS.—For purposes of this section:

19 “(1) The term ‘distribution utility’ means an
20 electric utility that has a service obligation to end-
21 users or to a State utility or electric cooperative
22 that, directly or indirectly, through 1 or more addi-
23 tional State utilities or electric cooperatives, provides
24 electric service to end-users.



1 “(2) The term ‘load-serving entity’ means a dis-
2 tribution utility or an electric utility that has a serv-
3 ice obligation.

4 “(3) The term ‘service obligation’ means a re-
5 quirement applicable to, or the exercise of authority
6 granted to, an electric utility under Federal, State
7 or local law or under long-term contracts to provide
8 electric service to end-users or to a distribution util-
9 ity.

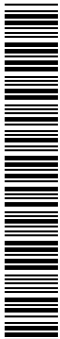
10 “(4) The term ‘State utility’ means a State or
11 any political subdivision of a State, or any agency,
12 authority, or instrumentality of any 1 or more of the
13 foregoing, or a corporation which is wholly owned,
14 directly or indirectly, by any 1 or more of the fore-
15 going, competent to carry on the business of devel-
16 oping, transmitting, utilizing or distributing power.”.

17 **SEC. 1237. STUDY ON THE BENEFITS OF ECONOMIC DIS-**
18 **PATCH.**

19 (a) STUDY.—The Secretary of Energy, in coordina-
20 tion and consultation with the States, shall conduct a
21 study on—

22 (1) the procedures currently used by electric
23 utilities to perform economic dispatch;

24 (2) identifying possible revisions to those proce-
25 dures to improve the ability of nonutility generation



1 resources to offer their output for sale for the pur-
2 pose of inclusion in economic dispatch; and

3 (3) the potential benefits to residential, com-
4 mercial, and industrial electricity consumers nation-
5 ally and in each state if economic dispatch proce-
6 dures were revised to improve the ability of non-
7 utility generation resources to offer their output for
8 inclusion in economic dispatch.

9 (b) DEFINITION.—The term “economic dispatch”
10 when used in this section means the operation of genera-
11 tion facilities to produce energy at the lowest cost to reli-
12 ably serve consumers, recognizing any operational limits
13 of generation and transmission facilities.

14 (c) REPORT TO CONGRESS AND THE STATES.—Not
15 later than 90 days after the date of enactment of this Act,
16 and on a yearly basis following, the Secretary of Energy
17 shall submit a report to Congress and the States on the
18 results of the study conducted under subsection (a), in-
19 cluding recommendations to Congress and the States for
20 any suggested legislative or regulatory changes.

21 **Subtitle D—Transmission Rate** 22 **Reform**

23 **SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

24 Part II of the Federal Power Act (16 U.S.C. 824 et
25 seq.) is amended by adding at the end the following:



1 **“SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.**

2 “(a) RULEMAKING REQUIREMENT.—Within 1 year
3 after the enactment of this section, the Commission shall
4 establish, by rule, incentive-based (including, but not lim-
5 ited to performance-based) rate treatments for the trans-
6 mission of electric energy in interstate commerce by public
7 utilities for the purpose of benefiting consumers by ensur-
8 ing reliability and reducing the cost of delivered power by
9 reducing transmission congestion. Such rule shall—

10 “(1) promote reliable and economically efficient
11 transmission and generation of electricity by pro-
12 moting capital investment in the enlargement, im-
13 provement, maintenance and operation of facilities
14 for the transmission of electric energy in interstate
15 commerce;

16 “(2) provide a return on equity that attracts
17 new investment in transmission facilities (including
18 related transmission technologies);

19 “(3) encourage deployment of transmission
20 technologies and other measures to increase the ca-
21 pacity and efficiency of existing transmission facili-
22 ties and improve the operation of such facilities; and

23 “(4) allow recovery of all prudently incurred
24 costs necessary to comply with mandatory reliability
25 standards issued pursuant to section 215 of this
26 Act.



1 The Commission may, from time to time, revise such rule.

2 “(b) ADDITIONAL INCENTIVES FOR RTO PARTICIPA-
3 TION.—In the rule issued under this section, the Commis-
4 sion shall, to the extent within its jurisdiction, provide for
5 incentives to each transmitting utility or electric utility
6 that joins a Regional Transmission Organization or Inde-
7 pendent System Operator. Incentives provided by the
8 Commission pursuant to such rule shall include—

9 “(1) recovery of all prudently incurred costs to
10 develop and participate in any proposed or approved
11 RTO, ISO, or independent transmission company;

12 “(2) recovery of all costs previously approved by
13 a State commission which exercised jurisdiction over
14 the transmission facilities prior to the utility’s par-
15 ticipation in the RTO or ISO, including costs nec-
16 essary to honor preexisting transmission service con-
17 tracts, in a manner which does not reduce the reve-
18 nues the utility receives for transmission services for
19 a reasonable transition period after the utility joins
20 the RTO or ISO;

21 “(3) recovery as an expense in rates of the
22 costs prudently incurred to conduct transmission
23 planning and reliability activities, including the costs
24 of participating in RTO, ISO and other regional
25 planning activities and design, study and other



1 precertification costs involved in seeking permits and
2 approvals for proposed transmission facilities;

3 “(4) a current return in rates for construction
4 work in progress for transmission facilities and full
5 recovery of prudently incurred costs for constructing
6 transmission facilities;

7 “(5) formula transmission rates; and

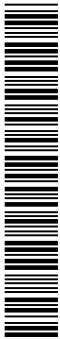
8 “(6) a maximum 15 year accelerated deprecia-
9 tion on new transmission facilities for rate treatment
10 purposes.

11 The Commission shall ensure that any costs recoverable
12 pursuant to this subsection may be recovered by such util-
13 ity through the transmission rates charged by such utility
14 or through the transmission rates charged by the RTO
15 or ISO that provides transmission service to such utility.

16 “(c) JUST AND REASONABLE RATES.—All rates ap-
17 proved under the rules adopted pursuant to this section,
18 including any revisions to such rules, are subject to the
19 requirement of sections 205 and 206 that all rates,
20 charges, terms, and conditions be just and reasonable and
21 not unduly discriminatory or preferential.”.

22 **SEC. 1242. VOLUNTARY TRANSMISSION PRICING PLANS.**

23 Part II of the Federal Power Act (16 U.S.C. 824 et
24 seq.) is amended by adding at the end the following:



1 **“SEC. 219. VOLUNTARY TRANSMISSION PRICING PLANS.**

2 “(a) IN GENERAL.—Any transmission provider, in-
3 cluding an RTO or ISO, may submit to the Commission
4 a plan or plans under section 205 containing the criteria
5 for determining the person or persons that will be required
6 to pay for any construction of new transmission facilities
7 or expansion, modification or upgrade of transmission fa-
8 cilities (in this section referred to as ‘transmission service
9 related expansion’) or new generator interconnection.

10 “(b) VOLUNTARY TRANSMISSION PRICING PLANS.—

11 (1) Any plan or plans submitted under subsection (a) shall
12 specify the method or methods by which costs may be allo-
13 cated or assigned. Such methods may include, but are not
14 limited to:

15 “(A) directly assigned;

16 “(B) participant funded; or

17 “(C) rolled into regional or sub-regional rates.

18 “(2) FERC shall approve a plan or plans submitted
19 under subparagraph (B) of paragraph (1) if such plan or
20 plans—

21 “(A) result in rates that are just and reason-
22 able and not unduly discriminatory or preferential
23 consistent with section 205; and

24 “(B) ensure that the costs of any transmission
25 service related expansion or new generator inter-
26 connection not required to meet applicable reliability



1 standards established under section 215 are assigned
2 in a fair manner, meaning that those who benefit
3 from the transmission service related expansion or
4 new generator interconnection pay an appropriate
5 share of the associated costs, provided that—

6 “(i) costs may not be assigned or allocated
7 to an electric utility if the native load customers
8 of that utility would not have required such
9 transmission service related expansion or new
10 generator interconnection absent the request for
11 transmission service related expansion or new
12 generator interconnection that necessitated the
13 investment;

14 “(ii) the party requesting such trans-
15 mission service related expansion or new gener-
16 ator interconnection shall not be required to
17 pay for both—

18 “(I) the assigned cost of the upgrade;
19 and

20 “(II) the difference between—

21 “(aa) the embedded cost paid for
22 transmission services (including the
23 cost of the requested upgrade); and



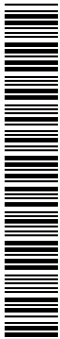
1 “(bb) the embedded cost that
2 would have been paid absent the up-
3 grade; and

4 “(iii) the party or parties who pay for fa-
5 cilities necessary for the transmission service
6 related expansion or new generator interconnec-
7 tion receives full compensation for its costs for
8 the participant funded facilities in the form
9 of—

10 “(I) monetary credit equal to the cost
11 of the participant funded facilities (ac-
12 counting for the time value of money at
13 the Gross Domestic Product deflator),
14 which credit shall be pro-rated in equal in-
15 stallments over a period of not more than
16 30 years and shall not exceed in total the
17 amount of the initial investment, against
18 the transmission charges that the funding
19 entity or its assignee is otherwise assessed
20 by the transmission provider;

21 “(II) appropriate financial or physical
22 rights; or

23 “(III) any other method of cost recov-
24 ery or compensation approved by the Com-
25 mission.



1 “(3) A plan submitted under this section shall apply
2 only to—

3 “(A) a contract or interconnection agreement
4 executed or filed with the Commission after the date
5 of enactment of this section; or

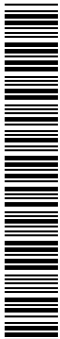
6 “(B) an interconnection agreement pending re-
7 hearing as of November 1, 2003.

8 “(4) Nothing in this section diminishes or alters the
9 rights of individual members of an RTO or ISO under
10 this Act.

11 “(5) Nothing in this section shall affect the allocation
12 of costs or the cost methodology employed by an RTO or
13 ISO authorized by the Commission to allocate costs (in-
14 cluding costs for transmission service related expansion or
15 new generator interconnection) prior to the date of enact-
16 ment of this section.

17 “(6) This section shall not apply within the area re-
18 ferred to in section 212(k)(2)(A).

19 “(7) The term ‘transmission provider’ means a public
20 utility that owns or operates facilities that provide inter-
21 connection or transmission service in interstate com-
22 merce.”.



1 **Subtitle E—Amendments to PURPA**

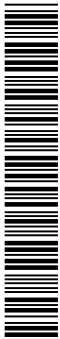
2 **SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.**

3 (a) ADOPTION OF STANDARDS.—Section 111(d) of
4 the Public Utility Regulatory Policies Act of 1978 (16
5 U.S.C. 2621(d)) is amended by adding at the end the fol-
6 lowing:

7 “(11) NET METERING.—Each electric utility
8 shall make available upon request net metering serv-
9 ice to any electric consumer that the electric utility
10 serves. For purposes of this paragraph, the term
11 ‘net metering service’ means service to an electric
12 consumer under which electric energy generated by
13 that electric consumer from an eligible on-site gener-
14 ating facility and delivered to the local distribution
15 facilities may be used to offset electric energy pro-
16 vided by the electric utility to the electric consumer
17 during the applicable billing period.

18 “(12) FUEL SOURCES.—Each electric utility
19 shall develop a plan to minimize dependence on 1
20 fuel source and to ensure that the electric energy it
21 sells to consumers is generated using a diverse range
22 of fuels and technologies, including renewable tech-
23 nologies.

24 “(13) FOSSIL FUEL GENERATION EFFI-
25 CIENCY.—Each electric utility shall develop and im-



1 plement a 10-year plan to increase the efficiency of
2 its fossil fuel generation.”.

3 (b) COMPLIANCE.—

4 (1) TIME LIMITATIONS.—Section 112(b) of the
5 Public Utility Regulatory Policies Act of 1978 (16
6 U.S.C. 2622(b)) is amended by adding at the end
7 the following:

8 “(3)(A) Not later than 2 years after the enactment
9 of this paragraph, each State regulatory authority (with
10 respect to each electric utility for which it has ratemaking
11 authority) and each nonregulated electric utility shall com-
12 mence the consideration referred to in section 111, or set
13 a hearing date for such consideration, with respect to each
14 standard established by paragraphs (11) through (13) of
15 section 111(d).

16 “(B) Not later than 3 years after the date of the en-
17 actment of this paragraph, each State regulatory authority
18 (with respect to each electric utility for which it has rate-
19 making authority), and each nonregulated electric utility,
20 shall complete the consideration, and shall make the deter-
21 mination, referred to in section 111 with respect to each
22 standard established by paragraphs (11) through (13) of
23 section 111(d).”.

24 (2) FAILURE TO COMPLY.—Section 112(c) of
25 the Public Utility Regulatory Policies Act of 1978



1 (16 U.S.C. 2622(c)) is amended by adding at the
2 end the following:

3 “In the case of each standard established by paragraphs
4 (11) through (13) of section 111(d), the reference con-
5 tained in this subsection to the date of enactment of this
6 Act shall be deemed to be a reference to the date of enact-
7 ment of such paragraphs (11) through (13).”.

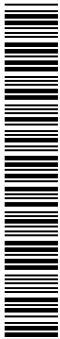
8 (3) PRIOR STATE ACTIONS.—

9 (A) IN GENERAL.—Section 112 of the
10 Public Utility Regulatory Policies Act of 1978
11 (16 U.S.C. 2622) is amended by adding at the
12 end the following:

13 “(d) PRIOR STATE ACTIONS.—Subsections (b) and
14 (c) of this section shall not apply to the standards estab-
15 lished by paragraphs (11) through (13) of section 111(d)
16 in the case of any electric utility in a State if, before the
17 enactment of this subsection—

18 “(1) the State has implemented for such utility
19 the standard concerned (or a comparable standard);

20 “(2) the State regulatory authority for such
21 State or relevant nonregulated electric utility has
22 conducted a proceeding to consider implementation
23 of the standard concerned (or a comparable stand-
24 ard) for such utility; or



1 “(3) the State legislature has voted on the im-
2 plementation of such standard (or a comparable
3 standard) for such utility.”.

4 (B) CROSS REFERENCE.—Section 124 of
5 such Act (16 U.S.C. 2634) is amended by add-
6 ing the following at the end thereof: “In the
7 case of each standard established by paragraphs
8 (11) through (13) of section 111(d), the ref-
9 erence contained in this subsection to the date
10 of enactment of this Act shall be deemed to be
11 a reference to the date of enactment of such
12 paragraphs (11) through (13).”.

13 **SEC. 1252. SMART METERING.**

14 (a) IN GENERAL.—Section 111(d) of the Public Utili-
15 ties Regulatory Policies Act of 1978 (16 U.S.C. 2621(d))
16 is amended by adding at the end the following:

17 “(14) TIME-BASED METERING AND COMMU-
18 NICATIONS.—

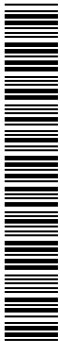
19 “(A) Not later than 18 months after the
20 date of enactment of this paragraph, each elec-
21 tric utility shall offer each of its customer class-
22 es, and provide individual customers upon cus-
23 tomer request, a time-based rate schedule under
24 which the rate charged by the electric utility
25 varies during different time periods and reflects



1 the variance, if any, in the utility's costs of gen-
2 erating and purchasing electricity at the whole-
3 sale level. The time-based rate schedule shall
4 enable the electric consumer to manage energy
5 use and cost through advanced metering and
6 communications technology.

7 “(B) The types of time-based rate sched-
8 ules that may be offered under the schedule re-
9 ferred to in subparagraph (A) include, among
10 others—

11 “(i) time-of-use pricing whereby elec-
12 tricity prices are set for a specific time pe-
13 riod on an advance or forward basis, typi-
14 cally not changing more often than twice a
15 year, based on the utility's cost of gener-
16 ating and/or purchasing such electricity at
17 the wholesale level for the benefit of the
18 consumer. Prices paid for energy consumed
19 during these periods shall be pre-estab-
20 lished and known to consumers in advance
21 of such consumption, allowing them to
22 vary their demand and usage in response
23 to such prices and manage their energy
24 costs by shifting usage to a lower cost pe-
25 riod or reducing their consumption overall;

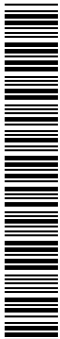


1 “(ii) critical peak pricing whereby
2 time-of-use prices are in effect except for
3 certain peak days, when prices may reflect
4 the costs of generating and/or purchasing
5 electricity at the wholesale level and when
6 consumers may receive additional discounts
7 for reducing peak period energy consump-
8 tion; and

9 “(iii) real-time pricing whereby elec-
10 tricity prices are set for a specific time pe-
11 riod on an advanced or forward basis, re-
12 flecting the utility’s cost of generating and/
13 or purchasing electricity at the wholesale
14 level, and may change as often as hourly.

15 “(C) Each electric utility subject to sub-
16 paragraph (A) shall provide each customer re-
17 questing a time-based rate with a time-based
18 meter capable of enabling the utility and cus-
19 tomer to offer and receive such rate, respec-
20 tively.

21 “(D) For purposes of implementing this
22 paragraph, any reference contained in this sec-
23 tion to the date of enactment of the Public Util-
24 ity Regulatory Policies Act of 1978 shall be



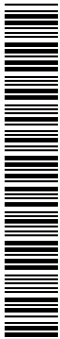
1 deemed to be a reference to the date of enact-
2 ment of this paragraph.

3 “(E) In a State that permits third-party
4 marketers to sell electric energy to retail elec-
5 tric consumers, such consumers shall be entitled
6 to receive the same time-based metering and
7 communications device and service as a retail
8 electric consumer of the electric utility.

9 “(F) Notwithstanding subsections (b) and
10 (c) of section 112, each State regulatory au-
11 thority shall, not later than 18 months after the
12 date of enactment of this paragraph conduct an
13 investigation in accordance with section 115(i)
14 and issue a decision whether it is appropriate to
15 implement the standards set out in subpara-
16 graphs (A) and (C).”.

17 (b) STATE INVESTIGATION OF DEMAND RESPONSE
18 AND TIME-BASED METERING.—Section 115 of the Public
19 Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625)
20 is amended as follows:

21 (1) By inserting in subsection (b) after the
22 phrase “the standard for time-of-day rates estab-
23 lished by section 111(d)(3)” the following: “and the
24 standard for time-based metering and communica-
25 tions established by section 111(d)(14)”.



1 (2) By inserting in subsection (b) after the
2 phrase “are likely to exceed the metering” the fol-
3 lowing: “and communications”.

4 (3) By adding the at the end the following:

5 “(i) TIME-BASED METERING AND COMMUNICA-
6 TIONS.—In making a determination with respect to the
7 standard established by section 111(d)(14), the investiga-
8 tion requirement of section 111(d)(14)(F) shall be as fol-
9 lows: Each State regulatory authority shall conduct an in-
10 vestigation and issue a decision whether or not it is appro-
11 priate for electric utilities to provide and install time-based
12 meters and communications devices for each of their cus-
13 tomers which enable such customers to participate in time-
14 based pricing rate schedules and other demand response
15 programs.”.

16 (c) FEDERAL ASSISTANCE ON DEMAND RE-
17 SPONSE.—Section 132(a) of the Public Utility Regulatory
18 Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by
19 striking “and” at the end of paragraph (3), striking the
20 period at the end of paragraph (4) and inserting “; and”,
21 and by adding the following at the end thereof:

22 “(5) technologies, techniques, and rate-making
23 methods related to advanced metering and commu-
24 nications and the use of these technologies, tech-
25 niques and methods in demand response programs.”.



1 (d) FEDERAL GUIDANCE.—Section 132 of the Public
2 Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)
3 is amended by adding the following at the end thereof:

4 “(d) DEMAND RESPONSE.—The Secretary shall be
5 responsible for—

6 “(1) educating consumers on the availability,
7 advantages, and benefits of advanced metering and
8 communications technologies, including the funding
9 of demonstration or pilot projects;

10 “(2) working with States, utilities, other energy
11 providers and advanced metering and communica-
12 tions experts to identify and address barriers to the
13 adoption of demand response programs; and

14 “(3) not later than 180 days after the date of
15 enactment of the Energy Policy Act of 2005, pro-
16 viding Congress with a report that identifies and
17 quantifies the national benefits of demand response
18 and makes a recommendation on achieving specific
19 levels of such benefits by January 1, 2007.”.

20 (e) DEMAND RESPONSE AND REGIONAL COORDINA-
21 TION.—

22 (1) IN GENERAL.—It is the policy of the United
23 States to encourage States to coordinate, on a re-
24 gional basis, State energy policies to provide reliable



1 and affordable demand response services to the pub-
2 lic.

3 (2) TECHNICAL ASSISTANCE.—The Secretary of
4 Energy shall provide technical assistance to States
5 and regional organizations formed by 2 or more
6 States to assist them in—

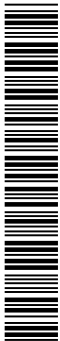
7 (A) identifying the areas with the greatest
8 demand response potential;

9 (B) identifying and resolving problems in
10 transmission and distribution networks, includ-
11 ing through the use of demand response;

12 (C) developing plans and programs to use
13 demand response to respond to peak demand or
14 emergency needs; and

15 (D) identifying specific measures con-
16 sumers can take to participate in these demand
17 response programs.

18 (3) REPORT.—Not later than 1 year after the
19 date of enactment of the Energy Policy Act of 2005,
20 the Commission shall prepare and publish an annual
21 report, by appropriate region, that assesses demand
22 response resources, including those available from all
23 consumer classes, and which identifies and reviews—



1 (A) saturation and penetration rate of ad-
2 vanced meters and communications tech-
3 nologies, devices and systems;

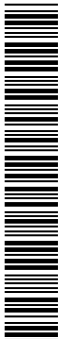
4 (B) existing demand response programs
5 and time-based rate programs;

6 (C) the annual resource contribution of de-
7 mand resources;

8 (D) the potential for demand response as
9 a quantifiable, reliable resource for regional
10 planning purposes; and

11 (E) steps taken to ensure that, in regional
12 transmission planning and operations, demand
13 resources are provided equitable treatment as a
14 quantifiable, reliable resource relative to the re-
15 source obligations of any load-serving entity,
16 transmission provider, or transmitting party.

17 (f) FEDERAL ENCOURAGEMENT OF DEMAND RE-
18 SPONSE DEVICES.—It is the policy of the United States
19 that time-based pricing and other forms of demand re-
20 sponse, whereby electricity customers are provided with
21 electricity price signals and the ability to benefit by re-
22 sponding to them, shall be encouraged, and the deploy-
23 ment of such technology and devices that enable electricity
24 customers to participate in such pricing and demand re-
25 sponse systems shall be facilitated. It is further the policy

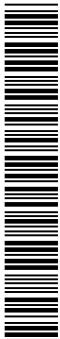


1 of the United States that the benefits of such demand re-
2 sponse that accrue to those not deploying such technology
3 and devices, but who are part of the same regional elec-
4 tricity entity, shall be recognized.

5 (g) TIME LIMITATIONS.—Section 112(b) of the Pub-
6 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
7 2622(b)) is amended by adding at the end the following:

8 “(4)(A) Not later than 1 year after the enact-
9 ment of this paragraph, each State regulatory au-
10 thority (with respect to each electric utility for which
11 it has ratemaking authority) and each nonregulated
12 electric utility shall commence the consideration re-
13 ferred to in section 111, or set a hearing date for
14 such consideration, with respect to the standard es-
15 tablished by paragraph (14) of section 111(d).

16 “(B) Not later than 2 years after the date of
17 the enactment of this paragraph, each State regu-
18 latory authority (with respect to each electric utility
19 for which it has ratemaking authority), and each
20 nonregulated electric utility, shall complete the con-
21 sideration, and shall make the determination, re-
22 ferred to in section 111 with respect to the standard
23 established by paragraph (14) of section 111(d).”.



1 (h) FAILURE TO COMPLY.—Section 112(c) of the
2 Public Utility Regulatory Policies Act of 1978 (16 U.S.C.
3 2622(c)) is amended by adding at the end the following:
4 “In the case of the standard established by paragraph (14)
5 of section 111(d), the reference contained in this sub-
6 section to the date of enactment of this Act shall be
7 deemed to be a reference to the date of enactment of such
8 paragraph (14).”.

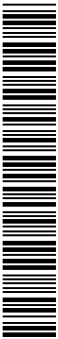
9 (i) PRIOR STATE ACTIONS REGARDING SMART ME-
10 TERING STANDARDS.—

11 (1) IN GENERAL.—Section 112 of the Public
12 Utility Regulatory Policies Act of 1978 (16 U.S.C.
13 2622) is amended by adding at the end the fol-
14 lowing:

15 “(e) PRIOR STATE ACTIONS.—Subsections (b) and
16 (c) of this section shall not apply to the standard estab-
17 lished by paragraph (14) of section 111(d) in the case of
18 any electric utility in a State if, before the enactment of
19 this subsection—

20 “(1) the State has implemented for such utility
21 the standard concerned (or a comparable standard);

22 “(2) the State regulatory authority for such
23 State or relevant nonregulated electric utility has
24 conducted a proceeding to consider implementation



1 of the standard concerned (or a comparable stand-
2 ard) for such utility within the previous 3 years; or
3 “(3) the State legislature has voted on the im-
4 plementation of such standard (or a comparable
5 standard) for such utility within the previous 3
6 years.”.

7 (2) CROSS REFERENCE.—Section 124 of such
8 Act (16 U.S.C. 2634) is amended by adding the fol-
9 lowing at the end thereof: “In the case of the stand-
10 ard established by paragraph (14) of section 111(d),
11 the reference contained in this subsection to the date
12 of enactment of this Act shall be deemed to be a ref-
13 erence to the date of enactment of such paragraph
14 (14).”.

15 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**
16 **TION PURCHASE AND SALE REQUIREMENTS.**

17 (a) TERMINATION OF MANDATORY PURCHASE AND
18 SALE REQUIREMENTS.—Section 210 of the Public Utility
19 Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is
20 amended by adding at the end the following:

21 “(m) TERMINATION OF MANDATORY PURCHASE AND
22 SALE REQUIREMENTS.—

23 “(1) OBLIGATION TO PURCHASE.—After the
24 date of enactment of this subsection, no electric util-
25 ity shall be required to enter into a new contract or



1 obligation to purchase electric energy from a quali-
2 fying cogeneration facility or a qualifying small
3 power production facility under this section if the
4 Commission finds that the qualifying cogeneration
5 facility or qualifying small power production facility
6 has nondiscriminatory access to—

7 “(A)(i) independently administered, auc-
8 tion-based day ahead and real time wholesale
9 markets for the sale of electric energy; and (ii)
10 wholesale markets for long-term sales of capac-
11 ity and electric energy; or

12 “(B)(i) transmission and interconnection
13 services that are provided by a Commission-ap-
14 proved regional transmission entity and admin-
15 istered pursuant to an open access transmission
16 tariff that affords nondiscriminatory treatment
17 to all customers; and (ii) competitive wholesale
18 markets that provide a meaningful opportunity
19 to sell capacity, including long-term and short-
20 term sales, and electric energy, including long-
21 term, short-term and real-time sales, to buyers
22 other than the utility to which the qualifying fa-
23 cility is interconnected. In determining whether
24 a meaningful opportunity to sell exists, the
25 Commission shall consider, among other fac-



1 tors, evidence of transactions within the rel-
2 evant market; or

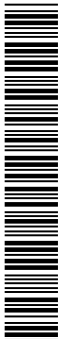
3 “(C) wholesale markets for the sale of ca-
4 capacity and electric energy that are, at a min-
5 imum, of comparable competitive quality as
6 markets described in subparagraphs (A) and
7 (B).

8 “(2) REVISED PURCHASE AND SALE OBLIGA-
9 TION FOR NEW FACILITIES.—(A) After the date of
10 enactment of this subsection, no electric utility shall
11 be required pursuant to this section to enter into a
12 new contract or obligation to purchase from or sell
13 electric energy to a facility that is not an existing
14 qualifying cogeneration facility unless the facility
15 meets the criteria for qualifying cogeneration facili-
16 ties established by the Commission pursuant to the
17 rulemaking required by subsection (n).

18 “(B) For the purposes of this paragraph, the
19 term ‘existing qualifying cogeneration facility’ means
20 a facility that—

21 “(i) was a qualifying cogeneration facility
22 on the date of enactment of subsection (m); or

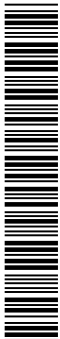
23 “(ii) had filed with the Commission a no-
24 tice of self-certification, self recertification or
25 an application for Commission certification



1 under 18 C.F.R. 292.207 prior to the date on
2 which the Commission issues the final rule re-
3 quired by subsection (n).

4 “(3) COMMISSION REVIEW.—Any electric utility
5 may file an application with the Commission for re-
6 lief from the mandatory purchase obligation pursu-
7 ant to this subsection on a service territory-wide
8 basis. Such application shall set forth the factual
9 basis upon which relief is requested and describe
10 why the conditions set forth in subparagraphs (A),
11 (B) or (C) of paragraph (1) of this subsection have
12 been met. After notice, including sufficient notice to
13 potentially affected qualifying cogeneration facilities
14 and qualifying small power production facilities, and
15 an opportunity for comment, the Commission shall
16 make a final determination within 90 days of such
17 application regarding whether the conditions set
18 forth in subparagraphs (A), (B) or (C) of paragraph
19 (1) have been met.

20 “(4) REINSTATEMENT OF OBLIGATION TO PUR-
21 CHASE.—At any time after the Commission makes a
22 finding under paragraph (3) relieving an electric
23 utility of its obligation to purchase electric energy,
24 a qualifying cogeneration facility, a qualifying small
25 power production facility, a State agency, or any



1 other affected person may apply to the Commission
2 for an order reinstating the electric utility's obliga-
3 tion to purchase electric energy under this section.
4 Such application shall set forth the factual basis
5 upon which the application is based and describe
6 why the conditions set forth in subparagraphs (A),
7 (B) or (C) of paragraph (1) of this subsection are
8 no longer met. After notice, including sufficient no-
9 tice to potentially affected utilities, and opportunity
10 for comment, the Commission shall issue an order
11 within 90 days of such application reinstating the
12 electric utility's obligation to purchase electric en-
13 ergy under this section if the Commission finds that
14 the conditions set forth in subparagraphs (A), (B) or
15 (C) of paragraph (1) which relieved the obligation to
16 purchase, are no longer met.

17 “(5) OBLIGATION TO SELL.—After the date of
18 enactment of this subsection, no electric utility shall
19 be required to enter into a new contract or obliga-
20 tion to sell electric energy to a qualifying cogenera-
21 tion facility or a qualifying small power production
22 facility under this section if the Commission finds
23 that—

24 “(A) competing retail electric suppliers are
25 willing and able to sell and deliver electric en-

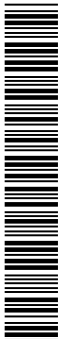


1 ergy to the qualifying cogeneration facility or
2 qualifying small power production facility; and

3 “(B) the electric utility is not required by
4 State law to sell electric energy in its service
5 territory.

6 “(6) NO EFFECT ON EXISTING RIGHTS AND
7 REMEDIES.—Nothing in this subsection affects the
8 rights or remedies of any party under any contract
9 or obligation, in effect or pending approval before
10 the appropriate State regulatory authority or non-
11 regulated electric utility on the date of enactment of
12 this subsection, to purchase electric energy or capac-
13 ity from or to sell electric energy or capacity to a
14 qualifying cogeneration facility or qualifying small
15 power production facility under this Act (including
16 the right to recover costs of purchasing electric en-
17 ergy or capacity).

18 “(7) RECOVERY OF COSTS.—(A) The Commis-
19 sion shall issue and enforce such regulations as are
20 necessary to ensure that an electric utility that pur-
21 chases electric energy or capacity from a qualifying
22 cogeneration facility or qualifying small power pro-
23 duction facility in accordance with any legally en-
24 forceable obligation entered into or imposed under



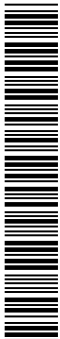
1 this section recovers all prudently incurred costs as-
2 sociated with the purchase.

3 “(B) A regulation under subparagraph (A) shall
4 be enforceable in accordance with the provisions of
5 law applicable to enforcement of regulations under
6 the Federal Power Act (16 U.S.C. 791a et seq.).

7 “(n) RULEMAKING FOR NEW QUALIFYING FACILI-
8 TIES.—(1)(A) Not later than 180 days after the date of
9 enactment of this section, the Commission shall issue a
10 rule revising the criteria in 18 C.F.R. 292.205 for new
11 qualifying cogeneration facilities seeking to sell electric en-
12 ergy pursuant to section 210 of this Act to ensure—

13 “(i) that the thermal energy output of a new
14 qualifying cogeneration facility is used in a produc-
15 tive and beneficial manner;

16 “(ii) the electrical, thermal, and chemical out-
17 put of the cogeneration facility is used fundamen-
18 tally for industrial, commercial, or institutional pur-
19 poses and is not intended fundamentally for sale to
20 an electric utility, taking into account technological,
21 efficiency, economic, and variable thermal energy re-
22 quirements, as well as State laws applicable to sales
23 of electric energy from a qualifying facility to its
24 host facility; and



1 “(iii) continuing progress in the development of
2 efficient electric energy generating technology.

3 “(B) The rule issued pursuant to section (n)(1)(A)
4 shall be applicable only to facilities that seek to sell electric
5 energy pursuant to section 210 of this Act. For all other
6 purposes, except as specifically provided in section
7 (m)(2)(A), qualifying facility status shall be determined
8 in accordance with the rules and regulations of this Act.

9 “(2) Notwithstanding rule revisions under paragraph
10 (1), the Commission’s criteria for qualifying cogeneration
11 facilities in effect prior to the date on which the Commis-
12 sion issues the final rule required by paragraph (1) shall
13 continue to apply to any cogeneration facility that—

14 “(A) was a qualifying cogeneration facility on
15 the date of enactment of subsection (m), or

16 “(B) had filed with the Commission a notice of
17 self-certification, self-recertification or an application
18 for Commission certification under 18 C.F.R.
19 292.207 prior to the date on which the Commission
20 issues the final rule required by paragraph (1).”.

21 (b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

22 (1) QUALIFYING SMALL POWER PRODUCTION
23 FACILITY.—Section 3(17)(C) of the Federal Power
24 Act (16 U.S.C. 796(17)(C)) is amended to read as
25 follows:



1 “(C) ‘qualifying small power production fa-
2 cility’ means a small power production facility
3 that the Commission determines, by rule, meets
4 such requirements (including requirements re-
5 specting fuel use, fuel efficiency, and reliability)
6 as the Commission may, by rule, prescribe;”.

7 (2) QUALIFYING COGENERATION FACILITY.—
8 Section 3(18)(B) of the Federal Power Act (16
9 U.S.C. 796(18)(B)) is amended to read as follows:

10 “(B) ‘qualifying cogeneration facility’
11 means a cogeneration facility that the Commis-
12 sion determines, by rule, meets such require-
13 ments (including requirements respecting min-
14 imum size, fuel use, and fuel efficiency) as the
15 Commission may, by rule, prescribe;”.

16 **Subtitle F—Repeal of PUHCA**

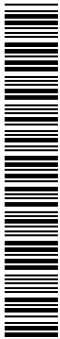
17 **SEC. 1261. SHORT TITLE.**

18 This subtitle may be cited as the “Public Utility
19 Holding Company Act of 2005”.

20 **SEC. 1262. DEFINITIONS.**

21 For purposes of this subtitle:

22 (1) AFFILIATE.—The term “affiliate” of a com-
23 pany means any company, 5 percent or more of the
24 outstanding voting securities of which are owned,



1 controlled, or held with power to vote, directly or in-
2 directly, by such company.

3 (2) ASSOCIATE COMPANY.—The term “associate
4 company” of a company means any company in the
5 same holding company system with such company.

6 (3) COMMISSION.—The term “Commission”
7 means the Federal Energy Regulatory Commission.

8 (4) COMPANY.—The term “company” means a
9 corporation, partnership, association, joint stock
10 company, business trust, or any organized group of
11 persons, whether incorporated or not, or a receiver,
12 trustee, or other liquidating agent of any of the fore-
13 going.

14 (5) ELECTRIC UTILITY COMPANY.—The term
15 “electric utility company” means any company that
16 owns or operates facilities used for the generation,
17 transmission, or distribution of electric energy for
18 sale.

19 (6) EXEMPT WHOLESALE GENERATOR AND
20 FOREIGN UTILITY COMPANY.—The terms “exempt
21 wholesale generator” and “foreign utility company”
22 have the same meanings as in sections 32 and 33,
23 respectively, of the Public Utility Holding Company
24 Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those



1 sections existed on the day before the effective date
2 of this subtitle.

3 (7) GAS UTILITY COMPANY.—The term “gas
4 utility company” means any company that owns or
5 operates facilities used for distribution at retail
6 (other than the distribution only in enclosed portable
7 containers or distribution to tenants or employees of
8 the company operating such facilities for their own
9 use and not for resale) of natural or manufactured
10 gas for heat, light, or power.

11 (8) HOLDING COMPANY.—The term “holding
12 company” means—

13 (A) any company that directly or indirectly
14 owns, controls, or holds, with power to vote, 10
15 percent or more of the outstanding voting secu-
16 rities of a public-utility company or of a holding
17 company of any public-utility company; and

18 (B) any person, determined by the Com-
19 mission, after notice and opportunity for hear-
20 ing, to exercise directly or indirectly (either
21 alone or pursuant to an arrangement or under-
22 standing with 1 or more persons) such a con-
23 trolling influence over the management or poli-
24 cies of any public-utility company or holding
25 company as to make it necessary or appropriate



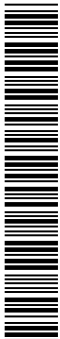
1 for the rate protection of utility customers with
2 respect to rates that such person be subject to
3 the obligations, duties, and liabilities imposed
4 by this subtitle upon holding companies.

5 (9) HOLDING COMPANY SYSTEM.—The term
6 “holding company system” means a holding com-
7 pany, together with its subsidiary companies.

8 (10) JURISDICTIONAL RATES.—The term “ju-
9 risdictional rates” means rates accepted or estab-
10 lished by the Commission for the transmission of
11 electric energy in interstate commerce, the sale of
12 electric energy at wholesale in interstate commerce,
13 the transportation of natural gas in interstate com-
14 merce, and the sale in interstate commerce of nat-
15 ural gas for resale for ultimate public consumption
16 for domestic, commercial, industrial, or any other
17 use.

18 (11) NATURAL GAS COMPANY.—The term “nat-
19 ural gas company” means a person engaged in the
20 transportation of natural gas in interstate commerce
21 or the sale of such gas in interstate commerce for
22 resale.

23 (12) PERSON.—The term “person” means an
24 individual or company.



1 (13) PUBLIC UTILITY.—The term “public util-
2 ity” means any person who owns or operates facili-
3 ties used for transmission of electric energy in inter-
4 state commerce or sales of electric energy at whole-
5 sale in interstate commerce.

6 (14) PUBLIC-UTILITY COMPANY.—The term
7 “public-utility company” means an electric utility
8 company or a gas utility company.

9 (15) STATE COMMISSION.—The term “State
10 commission” means any commission, board, agency,
11 or officer, by whatever name designated, of a State,
12 municipality, or other political subdivision of a State
13 that, under the laws of such State, has jurisdiction
14 to regulate public utility companies.

15 (16) SUBSIDIARY COMPANY.—The term “sub-
16 sidiary company” of a holding company means—

17 (A) any company, 10 percent or more of
18 the outstanding voting securities of which are
19 directly or indirectly owned, controlled, or held
20 with power to vote, by such holding company;
21 and

22 (B) any person, the management or poli-
23 cies of which the Commission, after notice and
24 opportunity for hearing, determines to be sub-
25 ject to a controlling influence, directly or indi-



1 rectly, by such holding company (either alone or
2 pursuant to an arrangement or understanding
3 with 1 or more other persons) so as to make it
4 necessary for the rate protection of utility cus-
5 tomers with respect to rates that such person
6 be subject to the obligations, duties, and liabil-
7 ities imposed by this subtitle upon subsidiary
8 companies of holding companies.

9 (17) VOTING SECURITY.—The term “voting se-
10 curity” means any security presently entitling the
11 owner or holder thereof to vote in the direction or
12 management of the affairs of a company.

13 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
14 **PANY ACT OF 1935.**

15 The Public Utility Holding Company Act of 1935 (15
16 U.S.C. 79 et seq.) is repealed.

17 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

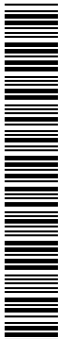
18 (a) IN GENERAL.—Each holding company and each
19 associate company thereof shall maintain, and shall make
20 available to the Commission, such books, accounts, memo-
21 randa, and other records as the Commission determines
22 are relevant to costs incurred by a public utility or natural
23 gas company that is an associate company of such holding
24 company and necessary or appropriate for the protection
25 of utility customers with respect to jurisdictional rates.



1 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
2 ing company or of any subsidiary company of a holding
3 company shall maintain, and shall make available to the
4 Commission, such books, accounts, memoranda, and other
5 records with respect to any transaction with another affil-
6 iate, as the Commission determines are relevant to costs
7 incurred by a public utility or natural gas company that
8 is an associate company of such holding company and nec-
9 essary or appropriate for the protection of utility cus-
10 tomers with respect to jurisdictional rates.

11 (c) HOLDING COMPANY SYSTEMS.—The Commission
12 may examine the books, accounts, memoranda, and other
13 records of any company in a holding company system, or
14 any affiliate thereof, as the Commission determines are
15 relevant to costs incurred by a public utility or natural
16 gas company within such holding company system and
17 necessary or appropriate for the protection of utility cus-
18 tomers with respect to jurisdictional rates.

19 (d) CONFIDENTIALITY.—No member, officer, or em-
20 ployee of the Commission shall divulge any fact or infor-
21 mation that may come to his or her knowledge during the
22 course of examination of books, accounts, memoranda, or
23 other records as provided in this section, except as may
24 be directed by the Commission or by a court of competent
25 jurisdiction.



1 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Upon the written request of a
3 State commission having jurisdiction to regulate a public-
4 utility company in a holding company system, the holding
5 company or any associate company or affiliate thereof,
6 other than such public-utility company, wherever located,
7 shall produce for inspection books, accounts, memoranda,
8 and other records that—

9 (1) have been identified in reasonable detail in
10 a proceeding before the State commission;

11 (2) the State commission determines are rel-
12 evant to costs incurred by such public-utility com-
13 pany; and

14 (3) are necessary for the effective discharge of
15 the responsibilities of the State commission with re-
16 spect to such proceeding.

17 (b) LIMITATION.—Subsection (a) does not apply to
18 any person that is a holding company solely by reason of
19 ownership of 1 or more qualifying facilities under the Pub-
20 lic Utility Regulatory Policies Act of 1978 (16 U.S.C.
21 2601 et seq.).

22 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
23 duction of books, accounts, memoranda, and other records
24 under subsection (a) shall be subject to such terms and
25 conditions as may be necessary and appropriate to safe-



1 guard against unwarranted disclosure to the public of any
2 trade secrets or sensitive commercial information.

3 (d) EFFECT ON STATE LAW.—Nothing in this sec-
4 tion shall preempt applicable State law concerning the pro-
5 vision of books, accounts, memoranda, and other records,
6 or in any way limit the rights of any State to obtain books,
7 accounts, memoranda, and other records under any other
8 Federal law, contract, or otherwise.

9 (e) COURT JURISDICTION.—Any United States dis-
10 trict court located in the State in which the State commis-
11 sion referred to in subsection (a) is located shall have ju-
12 risdiction to enforce compliance with this section.

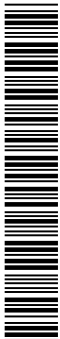
13 **SEC. 1266. EXEMPTION AUTHORITY.**

14 (a) RULEMAKING.—Not later than 90 days after the
15 effective date of this subtitle, the Commission shall issue
16 a final rule to exempt from the requirements of section
17 1264 (relating to Federal access to books and records) any
18 person that is a holding company, solely with respect to
19 1 or more—

20 (1) qualifying facilities under the Public Utility
21 Regulatory Policies Act of 1978 (16 U.S.C. 2601 et
22 seq.);

23 (2) exempt wholesale generators; or

24 (3) foreign utility companies.



1 (b) OTHER AUTHORITY.—The Commission shall ex-
2 empt a person or transaction from the requirements of
3 section 1264 (relating to Federal access to books and
4 records) if, upon application or upon the motion of the
5 Commission—

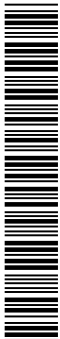
6 (1) the Commission finds that the books, ac-
7 counts, memoranda, and other records of any person
8 are not relevant to the jurisdictional rates of a pub-
9 lic utility or natural gas company; or

10 (2) the Commission finds that any class of
11 transactions is not relevant to the jurisdictional
12 rates of a public utility or natural gas company.

13 **SEC. 1267. AFFILIATE TRANSACTIONS.**

14 (a) COMMISSION AUTHORITY UNAFFECTED.—Noth-
15 ing in this subtitle shall limit the authority of the Commis-
16 sion under the Federal Power Act (16 U.S.C. 791a et seq.)
17 to require that jurisdictional rates are just and reasonable,
18 including the ability to deny or approve the pass through
19 of costs, the prevention of cross-subsidization, and the
20 issuance of such rules and regulations as are necessary
21 or appropriate for the protection of utility consumers.

22 (b) RECOVERY OF COSTS.—Nothing in this subtitle
23 shall preclude the Commission or a State commission from
24 exercising its jurisdiction under otherwise applicable law
25 to determine whether a public-utility company, public util-



1 ity, or natural gas company may recover in rates any costs
2 of an activity performed by an associate company, or any
3 costs of goods or services acquired by such public-utility
4 company from an associate company.

5 **SEC. 1268. APPLICABILITY.**

6 Except as otherwise specifically provided in this sub-
7 title, no provision of this subtitle shall apply to, or be
8 deemed to include—

9 (1) the United States;

10 (2) a State or any political subdivision of a
11 State;

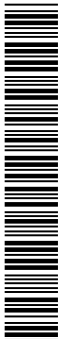
12 (3) any foreign governmental authority not op-
13 erating in the United States;

14 (4) any agency, authority, or instrumentality of
15 any entity referred to in paragraph (1), (2), or (3);
16 or

17 (5) any officer, agent, or employee of any entity
18 referred to in paragraph (1), (2), (3), or (4) acting
19 as such in the course of his or her official duty.

20 **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

21 Nothing in this subtitle precludes the Commission or
22 a State commission from exercising its jurisdiction under
23 otherwise applicable law to protect utility customers.



1 **SEC. 1270. ENFORCEMENT.**

2 The Commission shall have the same powers as set
3 forth in sections 306 through 317 of the Federal Power
4 Act (16 U.S.C. 825e–825p) to enforce the provisions of
5 this subtitle.

6 **SEC. 1271. SAVINGS PROVISIONS.**

7 (a) IN GENERAL.—Nothing in this subtitle, or other-
8 wise in the Public Utility Holding Company Act of 1935,
9 or rules, regulations, or orders thereunder, prohibits a per-
10 son from engaging in or continuing to engage in activities
11 or transactions in which it is legally engaged or authorized
12 to engage on the date of enactment of this Act, if that
13 person continues to comply with the terms (other than an
14 expiration date or termination date) of any such author-
15 ization, whether by rule or by order.

16 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
17 Nothing in this subtitle limits the authority of the Com-
18 mission under the Federal Power Act (16 U.S.C. 791a et
19 seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.).

20 **SEC. 1272. IMPLEMENTATION.**

21 Not later than 12 months after the date of enactment
22 of this subtitle, the Commission shall—

23 (1) issue such regulations as may be necessary
24 or appropriate to implement this subtitle (other than
25 section 1265, relating to State access to books and
26 records); and



1 (2) submit to Congress detailed recommenda-
2 tions on technical and conforming amendments to
3 Federal law necessary to carry out this subtitle and
4 the amendments made by this subtitle.

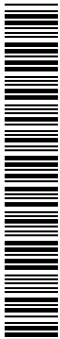
5 **SEC. 1273. TRANSFER OF RESOURCES.**

6 All books and records that relate primarily to the
7 functions transferred to the Commission under this sub-
8 title shall be transferred from the Securities and Exchange
9 Commission to the Commission.

10 **SEC. 1274. EFFECTIVE DATE.**

11 (a) IN GENERAL.—Except for section 1272 (relating
12 to implementation), this subtitle shall take effect 12
13 months after the date of enactment of this subtitle.

14 (b) COMPLIANCE WITH CERTAIN RULES.—If the
15 Commission approves and makes effective any final rule-
16 making modifying the standards of conduct governing en-
17 tities that own, operate, or control facilities for trans-
18 mission of electricity in interstate commerce or transpor-
19 tation of natural gas in interstate commerce prior to the
20 effective date of this subtitle, any action taken by a public-
21 utility company or utility holding company to comply with
22 the requirements of such rulemaking shall not subject
23 such public-utility company or utility holding company to
24 any regulatory requirement applicable to a holding com-

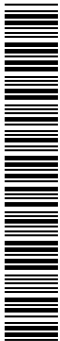


pany under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.).

SEC. 1275. SERVICE ALLOCATION.

(a) FERC REVIEW.—In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of the system or a State commission having jurisdiction over the public utility, the Commission, after the effective date of this subtitle, shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company in order to assure that each allocation is appropriate for the protection of investors and consumers of such public utility.

(b) COST ALLOCATION.—Nothing in this section shall preclude the Commission or a State commission from exercising its jurisdiction under other applicable law with respect to the review or authorization of any costs allocated to a public utility in a holding company system located in the affected State as a result of the acquisition of non-power goods or administrative and management services by such public utility from an associate company organized specifically for that purpose.



1 (c) RULES.—Not later than 6 months after the date
2 of enactment of this Act, the Commission shall issue rules
3 (which rules shall be effective no earlier than the effective
4 date of this subtitle) to exempt from the requirements of
5 this section any company in a holding company system
6 whose public utility operations are confined substantially
7 to a single State and any other class of transactions that
8 the Commission finds is not relevant to the jurisdictional
9 rates of a public utility.

10 (d) PUBLIC UTILITY.—As used in this section, the
11 term “public utility” has the meaning given that term in
12 section 201(e) of the Federal Power Act.

13 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

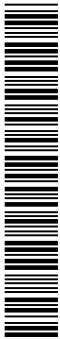
14 There are authorized to be appropriated such funds
15 as may be necessary to carry out this subtitle.

16 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**
17 **POWER ACT.**

18 (a) CONFLICT OF JURISDICTION.—Section 318 of the
19 Federal Power Act (16 U.S.C. 825q) is repealed.

20 (b) DEFINITIONS.—(1) Section 201(g)(5) of the Fed-
21 eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-
22 ing “1935” and inserting “2005”.

23 (2) Section 214 of the Federal Power Act (16 U.S.C.
24 824m) is amended by striking “1935” and inserting
25 “2005”.



1 **Subtitle G—Market Transparency,**
2 **Enforcement, and Consumer**
3 **Protection**

4 **SEC. 1281. MARKET TRANSPARENCY RULES.**

5 Part II of the Federal Power Act (16 U.S.C. 824 et
6 seq.) is amended by adding at the end the following:

7 **“SEC. 220. MARKET TRANSPARENCY RULES.**

8 “(a) IN GENERAL.—Not later than 180 days after
9 the date of enactment of this section, the Commission
10 shall issue rules establishing an electronic information sys-
11 tem to provide the Commission and the public with access
12 to such information as is necessary or appropriate to fa-
13 cilitate price transparency and participation in markets
14 subject to the Commission’s jurisdiction under this Act.
15 Such systems shall provide information about the avail-
16 ability and market price of wholesale electric energy and
17 transmission services to the Commission, State commis-
18 sions, buyers and sellers of wholesale electric energy, users
19 of transmission services, and the public on a timely basis.
20 The Commission shall have authority to obtain such infor-
21 mation from any electric utility or transmitting utility, in-
22 cluding any entity described in section 201(f).

23 “(b) EXEMPTIONS.—The Commission shall exempt
24 from disclosure information it determines would, if dis-
25 closed, be detrimental to the operation of an effective mar-



1 ket or jeopardize system security. This section shall not
2 apply to transactions for the purchase or sale of wholesale
3 electric energy or transmission services within the area de-
4 scribed in section 212(k)(2)(A). In determining the infor-
5 mation to be made available under this section and time
6 to make such information available, the Commission shall
7 seek to ensure that consumers and competitive markets
8 are protected from the adverse effects of potential collu-
9 sion or other anti-competitive behaviors that can be facili-
10 tated by untimely public disclosure of transaction-specific
11 information.

12 “(c) COMMODITY FUTURES TRADING COMMIS-
13 SION.—This section shall not affect the exclusive jurisdic-
14 tion of the Commodity Futures Trading Commission with
15 respect to accounts, agreements, contracts, or transactions
16 in commodities under the Commodity Exchange Act (7
17 U.S.C. 1 et seq.). Any request for information to a des-
18 ignated contract market, registered derivatives transaction
19 execution facility, board of trade, exchange, or market in-
20 volving accounts, agreements, contracts, or transactions in
21 commodities (including natural gas, electricity and other
22 energy commodities) within the exclusive jurisdiction of
23 the Commodity Futures Trading Commission shall be di-
24 rected to the Commodity Futures Trading Commission.



1 “(d) SAVINGS PROVISION.—In exercising its author-
2 ity under this section, the Commission shall not—

3 “(1) compete with, or displace from the market
4 place, any price publisher; or

5 “(2) regulate price publishers or impose any re-
6 quirements on the publication of information.”.

7 **SEC. 1282. MARKET MANIPULATION.**

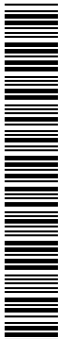
8 Part II of the Federal Power Act (16 U.S.C. 824 et
9 seq.) is amended by adding at the end the following:

10 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

11 “No person or other entity (including an entity de-
12 scribed in section 201(f)) shall willfully and knowingly re-
13 port any information relating to the price of electricity
14 sold at wholesale or availability of transmission capacity,
15 which information the person or any other entity knew to
16 be false at the time of the reporting, to a Federal agency
17 with intent to fraudulently affect the data being compiled
18 by such Federal agency.

19 **“SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

20 “(a) PROHIBITION.—No person or other entity (in-
21 cluding an entity described in section 201(f)) shall willfully
22 and knowingly enter into any contract or other arrange-
23 ment to execute a ‘round trip trade’ for the purchase or
24 sale of electric energy at wholesale.



1 “(b) DEFINITION.—For the purposes of this section,
2 the term ‘round trip trade’ means a transaction, or com-
3 bination of transactions, in which a person or any other
4 entity—

5 “(1) enters into a contract or other arrange-
6 ment to purchase from, or sell to, any other person
7 or other entity electric energy at wholesale;

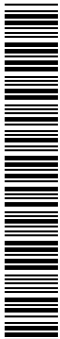
8 “(2) simultaneously with entering into the con-
9 tract or arrangement described in paragraph (1), ar-
10 ranges a financially offsetting trade with such other
11 person or entity for the same such electric energy,
12 at the same location, price, quantity and terms so
13 that, collectively, the purchase and sale transactions
14 in themselves result in no financial gain or loss; and
15 “(3) enters into the contract or arrangement
16 with a specific intent to fraudulently affect reported
17 revenues, trading volumes, or prices.”.

18 **SEC. 1283. ENFORCEMENT.**

19 (a) COMPLAINTS.—Section 306 of the Federal Power
20 Act (16 U.S.C. 825e) is amended as follows:

21 (1) By inserting “electric utility,” after “Any
22 person,”.

23 (2) By inserting “, transmitting utility,” after
24 “licensee” each place it appears.



1 (b) REVIEW OF COMMISSION ORDERS.—Section
2 313(a) of the Federal Power Act (16 U.S.C. 8251) is
3 amended by inserting “electric utility,” after “person,” in
4 the first 2 places it appears and by striking “any person
5 unless such person” and inserting “any entity unless such
6 entity”.

7 (c) INVESTIGATIONS.—Section 307(a) of the Federal
8 Power Act (16 U.S.C. 825f(a)) is amended as follows:

9 (1) By inserting “, electric utility, transmitting
10 utility, or other entity” after “person” each time it
11 appears.

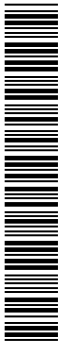
12 (2) By striking the period at the end of the
13 first sentence and inserting the following: “or in ob-
14 taining information about the sale of electric energy
15 at wholesale in interstate commerce and the trans-
16 mission of electric energy in interstate commerce.”.

17 (d) CRIMINAL PENALTIES.—Section 316 of the Fed-
18 eral Power Act (16 U.S.C. 825o) is amended—

19 (1) in subsection (a), by striking “\$5,000” and
20 inserting “\$1,000,000”, and by striking “two years”
21 and inserting “5 years”;

22 (2) in subsection (b), by striking “\$500” and
23 inserting “\$25,000”; and

24 (3) by striking subsection (c).



1 (e) CIVIL PENALTIES.—Section 316A of the Federal
2 Power Act (16 U.S.C. 825o–1) is amended as follows:

3 (1) In subsections (a) and (b), by striking “sec-
4 tion 211, 212, 213, or 214” each place it appears
5 and inserting “Part II”.

6 (2) In subsection (b), by striking “\$10,000”
7 and inserting “\$1,000,000”.

8 **SEC. 1284. REFUND EFFECTIVE DATE.**

9 Section 206(b) of the Federal Power Act (16 U.S.C.
10 824e(b)) is amended as follows:

11 (1) By striking “the date 60 days after the fil-
12 ing of such complaint nor later than 5 months after
13 the expiration of such 60-day period” in the second
14 sentence and inserting “the date of the filing of such
15 complaint nor later than 5 months after the filing of
16 such complaint”.

17 (2) By striking “60 days after” in the third
18 sentence and inserting “of”.

19 (3) By striking “expiration of such 60-day pe-
20 riod” in the third sentence and inserting “publica-
21 tion date”.

22 (4) By striking the fifth sentence and inserting
23 the following: “If no final decision is rendered by the
24 conclusion of the 180-day period commencing upon
25 initiation of a proceeding pursuant to this section,



1 the Commission shall state the reasons why it has
2 failed to do so and shall state its best estimate as
3 to when it reasonably expects to make such deci-
4 sion.”.

5 **SEC. 1285. REFUND AUTHORITY.**

6 Section 206 of the Federal Power Act (16 U.S.C.
7 824e) is amended by adding the following new subsection
8 at the end thereof:

9 “(e)(1) Except as provided in paragraph (2), if an
10 entity described in section 201(f) voluntarily makes a
11 short-term sale of electric energy and the sale violates
12 Commission rules in effect at the time of the sale, such
13 entity shall be subject to the Commission’s refund author-
14 ity under this section with respect to such violation.

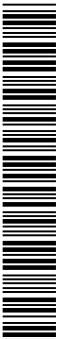
15 “(2) This section shall not apply to—

16 “(A) any entity that sells less than 8,000,000
17 megawatt hours of electricity per year; or

18 “(B) any electric cooperative.

19 “(3) For purposes of this subsection, the term ‘short-
20 term sale’ means an agreement for the sale of electric en-
21 ergy at wholesale in interstate commerce that is for a pe-
22 riod of 31 days or less (excluding monthly contracts sub-
23 ject to automatic renewal).

24 “(4) The Commission shall have refund authority
25 under subsection (e)(1) with respect to a voluntary short-



1 term sale of electric energy by the Bonneville Power Ad-
2 ministration (in this section ‘Bonneville’) only if the sale
3 is at an unjust and unreasonable rate and, in that event,
4 may order a refund only for short-term sales made by
5 Bonneville at rates that are higher than the highest just
6 and reasonable rate charged by any other entity for a
7 short-term sale of electric energy in the same geographic
8 market for the same, or most nearly comparable, period
9 as the sale by Bonneville.

10 “(5) With respect to any Federal power marketing
11 agency or the Tennessee Valley Authority, the Commission
12 shall not assert or exercise any regulatory authority or
13 powers under subsection (e)(1) other than the ordering of
14 refunds to achieve a just and reasonable rate.”.

15 **SEC. 1286. SANCTITY OF CONTRACT.**

16 (a) IN GENERAL.—The Federal Energy Regulatory
17 Commission (in this section, “the Commission”) shall have
18 no authority to abrogate or modify any provision of an
19 executed contract or executed contract amendment de-
20 scribed in subsection (b) that has been entered into or
21 taken effect, except upon a finding that failure to take
22 such action would be contrary to the public interest.

23 (b) LIMITATION.—Except as provided in subsection
24 (c), this section shall apply only to a contract or contract
25 amendment—



1 (1) executed on or after the date of enactment
2 of this Act; and

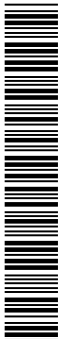
3 (2) entered into—

4 (A) for the purchase or sale of electric en-
5 ergy under section 205 of the Federal Power
6 Act (16 U.S.C. 824d) where the seller has been
7 authorized by the Commission to charge mar-
8 ket-based rates; or

9 (B) under section 4 of the Natural Gas
10 Act (15 U.S.C. 717c) where the natural gas
11 company has been authorized by the Commis-
12 sion to charge market-based rates for the serv-
13 ice described in the contract.

14 (c) EXCLUSION.—This section shall not apply to an
15 executed contract or executed contract amendment that
16 expressly provides for a standard of review other than the
17 public interest standard.

18 (d) SAVINGS PROVISION.—With respect to contracts
19 to which this section does not apply, nothing in this sec-
20 tion alters existing law regarding the applicable standard
21 of review for a contract subject to the jurisdiction of the
22 Commission.



1 **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**
2 **TICES.**

3 (a) **PRIVACY.**—The Federal Trade Commission may
4 issue rules protecting the privacy of electric consumers
5 from the disclosure of consumer information obtained in
6 connection with the sale or delivery of electric energy to
7 electric consumers.

8 (b) **SLAMMING.**—The Federal Trade Commission
9 may issue rules prohibiting the change of selection of an
10 electric utility except with the informed consent of the
11 electric consumer or if approved by the appropriate State
12 regulatory authority.

13 (c) **CRAMMING.**—The Federal Trade Commission
14 may issue rules prohibiting the sale of goods and services
15 to an electric consumer unless expressly authorized by law
16 or the electric consumer.

17 (d) **RULEMAKING.**—The Federal Trade Commission
18 shall proceed in accordance with section 553 of title 5,
19 United States Code, when prescribing a rule under this
20 section.

21 (e) **STATE AUTHORITY.**—If the Federal Trade Com-
22 mission determines that a State's regulations provide
23 equivalent or greater protection than the provisions of this
24 section, such State regulations shall apply in that State
25 in lieu of the regulations issued by the Commission under
26 this section.



1 (f) DEFINITIONS.—For purposes of this section:

2 (1) STATE REGULATORY AUTHORITY.—The
3 term “State regulatory authority” has the meaning
4 given that term in section 3(21) of the Federal
5 Power Act (16 U.S.C. 796(21)).

6 (2) ELECTRIC CONSUMER AND ELECTRIC UTIL-
7 ITY.—The terms “electric consumer” and “electric
8 utility” have the meanings given those terms in sec-
9 tion 3 of the Public Utility Regulatory Policies Act
10 of 1978 (16 U.S.C. 2602).

11 **Subtitle H—Merger Reform**

12 **SEC. 1291. MERGER REVIEW REFORM AND ACCOUNT-** 13 **ABILITY.**

14 (a) MERGER REVIEW REFORM.—Within 180 days
15 after the date of enactment of this Act, the Secretary of
16 Energy, in consultation with the Federal Energy Regu-
17 latory Commission and the Attorney General of the United
18 States, shall prepare, and transmit to Congress each of
19 the following:

20 (1) A study of the extent to which the authori-
21 ties vested in the Federal Energy Regulatory Com-
22 mission under section 203 of the Federal Power Act
23 are duplicative of authorities vested in—

24 (A) other agencies of Federal and State
25 Government; and



1 (B) the Federal Energy Regulatory Com-
2 mission, including under sections 205 and 206
3 of the Federal Power Act.

4 (2) Recommendations on reforms to the Fed-
5 eral Power Act that would eliminate any unneces-
6 sary duplication in the exercise of regulatory author-
7 ity or unnecessary delays in the approval (or dis-
8 approval) of applications for the sale, lease, or other
9 disposition of public utility facilities.

10 (b) MERGER REVIEW ACCOUNTABILITY.—Not later
11 than 1 year after the date of enactment of this Act and
12 annually thereafter, with respect to all orders issued with-
13 in the preceding year that impose a condition on a sale,
14 lease, or other disposition of public utility facilities under
15 section 203(b) of the Federal Power Act, the Federal En-
16 ergy Regulatory Commission shall transmit a report to
17 Congress explaining each of the following:

18 (1) The condition imposed.

19 (2) Whether the Commission could have im-
20 posed such condition by exercising its authority
21 under any provision of the Federal Power Act other
22 than under section 203(b).

23 (3) If the Commission could not have imposed
24 such condition other than under section 203(b), why



1 the Commission determined that such condition was
2 consistent with the public interest.

3 **SEC. 1292. ELECTRIC UTILITY MERGERS.**

4 (a) AMENDMENT.—Section 203(a) of the Federal
5 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-
6 lows:

7 “(a)(1) No public utility shall, without first having
8 secured an order of the Commission authorizing it to do
9 so—

10 “(A) sell, lease, or otherwise dispose of the
11 whole of its facilities subject to the jurisdiction of
12 the Commission, or any part thereof of a value in
13 excess of \$10,000,000;

14 “(B) merge or consolidate, directly or indi-
15 rectly, such facilities or any part thereof with those
16 of any other person, by any means whatsoever; or

17 “(C) purchase, acquire, or take any security
18 with a value in excess of \$10,000,000 of any other
19 public utility.

20 “(2) No holding company in a holding company sys-
21 tem that includes a public utility shall purchase, acquire,
22 or take any security with a value in excess of \$10,000,000
23 of, or, by any means whatsoever, directly or indirectly,
24 merge or consolidate with, a public utility or a holding
25 company in a holding company system that includes a



1 public utility with a value in excess of \$10,000,000 with-
2 out first having secured an order of the Commission au-
3 thorizing it to do so.

4 “(3) Upon receipt of an application for such approval
5 the Commission shall give reasonable notice in writing to
6 the Governor and State commission of each of the States
7 in which the physical property affected, or any part there-
8 of, is situated, and to such other persons as it may deem
9 advisable.

10 “(4) After notice and opportunity for hearing, the
11 Commission shall approve the proposed disposition, con-
12 solidation, acquisition, or change in control, if it finds that
13 the proposed transaction will be consistent with the public
14 interest. In evaluating whether a transaction will be con-
15 sistent with the public interest, the Commission shall con-
16 sider whether the proposed transaction—

17 “(A) will adequately protect consumer interests;

18 “(B) will be consistent with competitive whole-
19 sale markets;

20 “(C) will impair the financial integrity of any
21 public utility that is a party to the transaction or an
22 associate company of any party to the transaction;
23 and

24 “(D) satisfies such other criteria as the Com-
25 mission considers consistent with the public interest.



1 “(5) The Commission shall, by rule, adopt procedures
2 for the expeditious consideration of applications for the
3 approval of dispositions, consolidations, or acquisitions
4 under this section. Such rules shall identify classes of
5 transactions, or specify criteria for transactions, that nor-
6 mally meet the standards established in paragraph (4).
7 The Commission shall provide expedited review for such
8 transactions. The Commission shall grant or deny any
9 other application for approval of a transaction not later
10 than 180 days after the application is filed. If the Com-
11 mission does not act within 180 days, such application
12 shall be deemed granted unless the Commission finds,
13 based on good cause, that further consideration is required
14 to determine whether the proposed transaction meets the
15 standards of paragraph (4) and issues an order tolling the
16 time for acting on the application for not more than 180
17 days, at the end of which additional period the Commis-
18 sion shall grant or deny the application.

19 “(6) For purposes of this subsection, the terms ‘asso-
20 ciate company’, ‘holding company’, and ‘holding company
21 system’ have the meaning given those terms in the Public
22 Utility Holding Company Act of 2005.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect 12 months after the date of
25 enactment of this section.



1 **Subtitle I—Definitions**

2 **SEC. 1295. DEFINITIONS.**

3 (a) ELECTRIC UTILITY.—Section 3(22) of the Fed-
4 eral Power Act (16 U.S.C. 796(22)) is amended to read
5 as follows:

6 “(22) ELECTRIC UTILITY.—The term ‘electric
7 utility’ means any person or Federal or State agency
8 (including any entity described in section 201(f))
9 that sells electric energy; such term includes the
10 Tennessee Valley Authority and each Federal power
11 marketing administration.”.

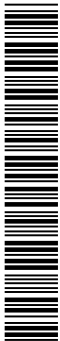
12 (b) TRANSMITTING UTILITY.—Section 3(23) of the
13 Federal Power Act (16 U.S.C. 796(23)) is amended to
14 read as follows:

15 “(23) TRANSMITTING UTILITY.—The term
16 ‘transmitting utility’ means an entity, including any
17 entity described in section 201(f), that owns, oper-
18 ates, or controls facilities used for the transmission
19 of electric energy—

20 “(A) in interstate commerce; or

21 “(B) for the sale of electric energy at
22 wholesale.”.

23 (c) ADDITIONAL DEFINITIONS.—Section 3 of the
24 Federal Power Act (16 U.S.C. 796) is amended by adding
25 at the end the following:



1 “(26) ELECTRIC COOPERATIVE.—The term
2 ‘electric cooperative’ means a cooperatively owned
3 electric utility.

4 “(27) RTO.—The term ‘Regional Transmission
5 Organization’ or ‘RTO’ means an entity of sufficient
6 regional scope approved by the Commission to exer-
7 cise operational or functional control of facilities
8 used for the transmission of electric energy in inter-
9 state commerce and to ensure nondiscriminatory ac-
10 cess to such facilities.

11 “(28) ISO.—The term ‘Independent System
12 Operator’ or ‘ISO’ means an entity approved by the
13 Commission to exercise operational or functional
14 control of facilities used for the transmission of elec-
15 tric energy in interstate commerce and to ensure
16 nondiscriminatory access to such facilities.”.

17 (d) COMMISSION.—For the purposes of this title, the
18 term “Commission” means the Federal Energy Regu-
19 latory Commission.

20 (e) APPLICABILITY.—Section 201(f) of the Federal
21 Power Act (16 U.S.C. 824(f)) is amended by adding after
22 “political subdivision of a state,” the following: “an elec-
23 tric cooperative that has financing under the Rural Elec-
24 trification Act of 1936 (7 U.S.C. 901 et seq.) or that sells



1 less than 4,000,000 megawatt hours of electricity per
2 year,”.

3 **Subtitle J—Technical and** 4 **Conforming Amendments**

5 **SEC. 1297. CONFORMING AMENDMENTS.**

6 The Federal Power Act is amended as follows:

7 (1) Section 201(b)(2) of such Act (16 U.S.C.
8 824(b)(2)) is amended as follows:

9 (A) In the first sentence by striking “210,
10 211, and 212” and inserting “203(a)(2),
11 206(e), 210, 211, 211A, 212, 215, 216, 217,
12 218, 219, 220, 221, and 222”.

13 (B) In the second sentence by striking
14 “210 or 211” and inserting “203(a)(2), 206(e),
15 210, 211, 211A, 212, 215, 216, 217, 218, 219,
16 220, 221, and 222”.

17 (C) Section 201(b)(2) of such Act is
18 amended by striking “The” in the first place it
19 appears and inserting “Notwithstanding section
20 201(f), the” and in the second sentence after
21 “any order” by inserting “or rule”.

22 (2) Section 201(e) of such Act is amended by
23 striking “210, 211, or 212” and inserting “206(e),
24 206(f), 210, 211, 211A, 212, 215, 216, 217, 218,
25 219, 220, 221, and 222”.



1 (3) Section 206 of such Act (16 U.S.C. 824e)
2 is amended as follows:

3 (A) In subsection (b), in the seventh sen-
4 tence, by striking “the public utility to make”.

5 (B) In the first sentence of subsection (a),
6 by striking “hearing had” and inserting “hear-
7 ing held”.

8 (4) Section 211(c) of such Act (16 U.S.C.
9 824j(c)) is amended by—

10 (A) striking “(2)”;

11 (B) striking “(A)” and inserting “(1)”

12 (C) striking “(B)” and inserting “(2)”;

13 and

14 (D) striking “termination of modification”
15 and inserting “termination or modification”.

16 (5) Section 211(d)(1) of such Act (16 U.S.C.
17 824j(d)(1)) is amended by striking “electric utility”
18 the second time it appears and inserting “transmit-
19 ting utility”.

20 (6) Section 315 (c) of such Act (16 U.S.C.
21 825n(c)) is amended by striking “subsection” and
22 inserting “section”.

